

United States
Circuit Court of Appeals

For the Ninth Circuit. 2

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MONTGOMERY WARD & COMPANY,
Respondent.

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Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

In Two Volumes

VOLUME II

Pages 499 to 910

FILED

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Upon Petition for Enforcement and Upon Petition
for Review of An Order of the National
Labor Relations Board

PAUL P. O'BRIEN,
CLERK

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(Testimony of Maxey M. Langford.)

Q. The statement was made that you could not make another contract without including that clause, in fairness to the parties who were parties to those contracts? A. That is correct.

Q. Trial Examiner Bokar: The other contracts that you have in the Portland area cover the same types of employees, or classifications of employees, as set forth in the contract, Board's Exhibit 7?

The Witness: That is correct.

Q. (Mr. Ball continuing) Now, as a matter of fact, in defining the employees coming under your jurisdiction, you find in many cases, an employee in a store such as Montgomery Ward may do part selling and part work that belongs in the jurisdiction of some other craft.

A. That might be the case out there, yes.

Q. You do run across the situation?

A. Occasionally, yes, we do.

Q. Well, as far as you know, for example, the linoleum layers might also be employed selling linoleum at Ward's?

A. I don't have any reason to believe to the contrary at all.

Q. Did you have any occasion to discuss with Mr. Dixon his telephone call with Mr. Powell on October 23rd?

A. I don't believe that we discussed it. If I remember correctly, Mr. Dixon told me he had talked to Mr. Powell on the 'phone, and was intending to meet Mr. Powell in California, [377] subsequent to that 'phone call.

(Testimony of Maxey M. Langford.)

Q. Turning now to the meeting of December 13th, or, rather, the meeting of December 16th, where this contract was discussed. When you say that no reasons were advanced by the company for their disagreement with certain sections, you don't mean to imply that you asked them, at that time, to state the reasons? A. No, I didn't.

Q. The fact is, what you were trying to do was to offer this contract and find the clauses which were acceptable? That was one of the reasons?

A. At that time, yes.

Q. There had been, at other times, a rather full discussion of a good many of these points?

A. Number of them, yes.

Q. As to the matter, for example, of wages: you had heard the statement made it was a company policy to pay as much or more in the community as was being paid elsewhere?

A. Yes, I heard the statement made.

Mr. Ball: I think that is all.

Trial Examiner Bokat: Redirect, Mr. Walker?

Redirect Examination

Q. (Mr. Walker) What figures did Mr. Hicks and Mr. Dixon give concerning majority representation at the meeting of October 22nd? [378]

A. Mr. Dixon, at that time, stated he had between eighty-five and ninety per cent of the people coming under the jurisdiction of his union signed up as members. Mr. Hicks made the statement he had between sixty and sixty-five per cent.

(Testimony of Maxey M. Langford.)

Q. Was there any further discussion concerning the extent of majority representation?

A. Not that I can remember.

Q. After going over the contract at the meeting of December 16th, did Local 1257 request anything further of the company?

A. We requested, at that time, as we had done prior to the 16th, a written counter proposal from the company.

Mr. Ball: Now, just a minute. I object to the question and move to strike the answer unless a date is set specifically.

Trial Examiner Bokar: He said December 16th. Read the question and answer, Mr. Reporter.

(Whereupon the question and answer referred to were read aloud by the reporter as above indicated.)

Mr. Ball: I move to strike that out as involving an opinion and conclusion involving ambiguous language. The witness should be instructed to state exactly what was said.

Trial Examiner Bokar: I will let it stand, subject to further clarification. The witness can state exactly what was said. What was said on that occasion?

The Witness:; If I may explain, Mr. Examiner, on the 13th, 14th, and 16th the Retail Clerks representatives asked the com- [379] pany to submit a counter proposal on the contract that had been given to the company.

(Testimony of Maxey M. Langford.)

Trial Examiner Bokat: Who asked?

The Witness: Mr. Dixon, myself, and Mr. Landye.

Trial Examiner Bokat: You asked it of Mr. Powell?

The Witness: Of Mr. Powell, yes.

Trial Examiner Bokat: What was the reply, if any?

The Witness: Mr. Powell stated that the company did not feel that they had anything to ask of the union.

Mr. Ball: It is understood I have again, to this line of inquiry, the same general objection which I expressed?

Trial Examiner Bokat: Yes. The record may so show.

Q. (Mr. Walker continuing) Was such ever received?

A. We have never received a written counter proposal from the company.

Mr. Ball: The same objection to that question and answer.

Trial Examiner Bokat: Yes. I will let it stand.

Mr. Walker: That is all.

Mr. Ball: That is all.

Trial Examiner Bokat: Witness excused.

(Witness excused)

Mr. Walker: If the Examiner please, I would like to request permission to produce Mr. Landye as a witness.

Mr. Ball: To such, respondent strenuously objects. Mr. Landye appears as counsel in the case, and if they follow the [380] rules of ethics and of orderly procedure, Mr. Landye should not appear in the dual capacity of representing his client as an advocate and assisting his client's case by getting up and testifying. The testimony shows that prior to the meeting of December 13th, Mr. Landye had already consulted with Mr. Estabrook, at least, in the formation of charges against this company. If counsel, under the circumstances, acts as both witness and counsel in the prosecution of those charges, it is a denial to this company of due process of law, a breach of professional ethics, and something this Examiner, in its discretion, should not permit.

Mr. Landye: If the Court please,—

Trial Examiner Bokat: I am ready to make my ruling; but if there is something you want to say,—

Mr. Landye: No. That is all right.

Trial Examiner Bokat: I don't see where I have any discretion to prevent Mr. Landye from taking the stand, if he so desires, and the Board desires to call him as a witness. I will have to overrule the objection. [381]

JAMES LANDYE

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: James Landye, 1003 Corbett Building, Portland.

Q. (Mr. Walker) What is your occupation?

A. Attorney.

Q. How long have you been an attorney?

A. 1934.

Q. To the bars of what states are you admitted and licensed to practice?

A. Well, California, Oregon, and Washington; all three. And when I stated 1934, I meant that was Oregon. The first one.

Q. Prior to admission to State of Oregon, what experience had you had?

A. Restate the question please.

Trial Examiner Bokat: Read it back. Is it necessary to go into the qualifications of Mr. Landye?

Mr. Walker: I just have one point on his qualifications.

Trial Examiner Bokat: All right. Read the question now to Mr. Landye, please.

(Whereupon the question referred to was read aloud by the reporter as above recorded.)

(Testimony of James Landye.)

A. Well, none in particular, Mr. Walker. I had been a member of a labor union, but no particular experience prior to my admission.

Q. Are you associated with the Pacific Coast Labor Bureau?

A. I was, from 1935 until the fall of '38.

Q. What was the nature of your work with the Pacific Coast Labor Bureau?

A. Negotiations and arbitrations for labor unions.

Mr. Ball: Let the record show that the respondent objects to this line of questioning of what Mr. Estabrook did. Object to it as irrelevant and immaterial.

Trial Examiner Bokar: Mr. Landye, you mean?

Mr. Ball: Mr. Landye, yes.

Trial Examiner Bokar: I don't know. I will have to let it stand at this time, subject to some connection.

Q. (Mr. Walker continuing) How long had you been so engaged with the Pacific Coast Labor Bureau?

A. From March of 1935 to October, 1938.

Mr. Ball: I assume my objection goes to this entire line?

Trial Examiner Bokar: Yes. I assume the purpose is to show Mr. Landye is an experienced negotiator in negotiating contracts?

Mr. Ball: Well, let the record show, if that be the purpose, we object to any testimony to qualify

(Testimony of James Landye.)

Mr. Landye as any expert. This is not a case calling for expert opinion.

Trial Examiner Bokat: I don't know whether he is going to [383] be called upon to give any opinion or not. Am I correct in that assumption?

Mr. Walker: I may say, I am not asking him to express an opinion.

Trial Examiner Bokat: Am I correct in the assumption that the purpose is to show he has had experience in negotiations?

Mr. Walker: Yes.

Trial Examiner Bokat: All right.

Q. (Mr. Walker continuing) During that period of time, what organizations did you represent in negotiations or arbitration?

Trial Examiner Bokat: Do you really have to go into all that?

The Witness: I couldn't answer that, Mr. Walker. It has been several hundred. I couldn't name them. Hundreds of them.

Trial Examiner Bokat: I am not interested in a list.

The Witness: It would take me too long to recall them.

Q. (Mr. Walker continuing) Have they all been negotiations between labor organizations and employers? A. All of them, yes.

Q. Approximately how many negotiations have you conducted?

(Testimony of James Landye.)

A. I can't answer that question. I can remember twenty-eight in one month; but I can't remember over three and a half years how many hundreds.

Trial Examiner Bokat: You say it ran into the hundreds?

The Witness: Yes. [384]

Trial Examiner Bokat: All right.

Q. (Mr. Walker continuing) Have you had occasion to meet with any of the representatives of Montgomery Ward? A. Yes, I have.

Q. And when did you first meet with them?

A. I first met with them either in April or May, 1940, on the original Warehousemen's case. That was my first experience with Montgomery Ward.

Q. That is the representation meeting?

A. Yes, for the Warehousemen.

Q. Board's Exhibit 2? A. Yes.

Q. Was the record of it? A. Yes.

Q. Subsequent to that, did you have occasion to meet with any of the representatives of respondent?

A. Yes, I did.

Q. When was the next time?

A. Approximately September 19, 1940.

Q. Where was that meeting?

A. In the Heathman Hotel.

Q. You met with whom there?

A. Mr. Powell and Mr. Barth and Mr. James Barr.

Q. Did anyone accompany you?

(Testimony of James Landye.)

A. Mr. Dixon. [385]

Q. Will you relate what occurred at that meeting.

(Off the record discussion.)

A. Mr. Dixon and myself went into the hotel room, and the three gentlemen from the company were there. I met Mr. Powell for the first time, and Mr. Barr. Mr. Barr stated that Mr. Powell would speak for the company. We started then to discuss the terms of the contract.

Q. Board's Exhibit 7?

A. Yes. Mr. Powell asked us exactly who we represented. Mr. Dixon told him that we represented the Retail Clerks. Mr. Powell stated that he didn't want to deal just with the Retail Clerks alone; he wanted to deal with the office workers as well as the Retail Clerks, in the retail unit. Mr. Dixon explained to Mr. Powell that he only had jurisdiction over the Retail Clerks,—which he said was an International Union; that the Office Workers had jurisdiction over the office workers in the retail side, as well as jurisdiction over the office workers on the mail order side. Mr. Dixon stated that he had no power to deal for the office workers. I stated about the same thing. Mr. Powell then told us that the company set-up was such that the retail side and the mail order side had different heads within their company. He said that one was directed from Chicago and one from Oakland, I believe; and that it was more convenient for the company to deal on

(Testimony of James Landye.)

the retail side; and that he wanted to deal with just one union for all the employees on [386] the retail side. Mr. Dixon told him again that that was impossible; that he did not represent the office workers. We started discussion of Section 1, and Mr. Powell stated that they would not grant the union shop; and then he stated again that the company wanted to deal with one union for all the employees on the retail side. At that point I told Mr. Powell that there would be no use us discussing the whole contract, or any other parts of it, until we found out if the company would recognize the fact that the Retail Clerks had a majority of the retail clerks; and that the company would deal with us as such, for the retail clerks. He stated,—Mr. Powell,—that he didn't want to deal with a union when he wasn't sure they had the majority. I asked him if there was any question that the Retail Clerks had a majority, and he said he was not saying they didn't and he was not saying they did. I asked him if the letter, which we had previously sent, was not sufficient; and he said he wasn't saying whether it was or whether it wasn't. I then suggested, in order to clear up the whole matter, three separate methods by which we might straighten it out. One was to take our letter of August as protection for the company,—I think is the way I put it. Second, was to have a check-off of the books of our membership in the Retail Clerks with the retail clerks of the company showing on their payroll. That could either

(Testimony of James Landye.)

be done, I told them, by either a National Labor Relations Board Field Examiner, or anyone else [387] as far as we were concerned. Any auditor. Or, that we have an election, a consent election, whereby we would agree on the payroll of the retail clerks and have an election any place to determine it that way.

Q. Did Mr. Powell respond to any of the three suggestions?

A. He said that he couldn't answer the question at that time. I asked him if he wouldn't let us know within two or three days. I finally asked him if he would let us know by the next Monday,—I forget what September 19th was,—I asked him if he would let us have it by the next Monday—I remember that,—and he said he would. Then we got back to the question of the contract. I asked Mr. Powell the question,—so that we would be clear on the whole things,—I asked him, “Assume that we agree on every section of the contract, would the company consent to sign an agreement with us?” Because, I told him, I was disturbed over the statement as to whether they recognized us or not. And he said he couldn't give the answer to that question; that he thought we should go ahead and negotiate and leave the question as to whether an agreement could be signed or not until we got through. I told him that we couldn't do that, because if the membership ever found out that we had negotiated a contract

(Testimony of James Landye.)

for two or three weeks and then the company refused to sign it and raised the question of recognition, probably Mr. Dixon and myself would both be out of jobs. I told him I couldn't understand the company coming [388] to a meeting without having a definite position on the question of recognition. I think that about concluded that meeting. We left with the company telling us they would let us know by the next Monday,—let Mr. Dixon know, not myself.

Q. Did you hear from Mr. Powell after that?

A. Not in regard to the Retail Clerks. I didn't ask Mr. Powell to call me; I told him to call Mr. Dixon.

Q. After that, did you meet with any of the respondent's representatives?

A. Yes; December 13th.

Trial Examiner Bokar: You were present at all three of those meetings?

The Witness: No, I was not. I was ill after December 13th and I went home.

Trial Examiner Bokar: Just the December 13th meeting?

The Witness: Just the December 13th meeting.

Q. (Mr. Walker continuing) Were you at the meeting of October 22nd? A. No.

Q. Now, what took place at the meeting of December 13th?

A. Mr. Brady opened that meeting, the President of the Central Labor Council. Mr. Brady stated

(Testimony of James Landye.)

that a request had come in to put Montgomery Ward on the unfair list. He stated that he,—Mr. Brady,—Mr. Anderson, Secretary of the Council, and one other member of the Executive Board, had met with Montgomery [389] Ward two or three days previous to December 13th to see if they could get the parties together, and that as a result of that meeting, they had asked to have Mr. Powell come up from Oakland, and that this was the result of their conversations,—this meeting Mr. Brady opened. Mr. Estabrook then spoke and discussed the question of the union shop. It was discussed back and forth.

Q. What was said concerning that? Just one minute. You are referring now to Article 2 of Board's Exhibit 3. Is that correct?

A. Yes. I didn't have the agreement in front of me at the time, myself, but I knew what it was. That is what they were discussing.

Q. How did the discussion relative to Article 2 begin?

A. Mr. Estabrook, I believe, pointed out, or said, that they wanted that included in their contract. Mr. Powell said that that was,—the company would not enter into any agreement whereby they told the employees whether or not they should belong to a union. I, at that time, told Mr. Powell it is impossible, to have industrial relations, for a company to have half and half; and that for better industrial relations, we had found by experience, it was best

(Testimony of James Landye.)

to have them all in the union. And Mr. Brady spoke about along the same lines.

Q. What was the result of the discussion concerning Article 2?

A. Mr. Powell refused the section.

Q. What did he say about it? I mean, did he say anything further than that which you have related?

A. That was just the general effect of it.

Q. What next occurred at the meeting?

A. Mr. Ashe asked if the company had all the proposals of the unions before them. Mr. Powell said, "Yes", except they did not have the Office Workers; and I said that we would see that was gotten in there that afternoon or the next day.

Trial Examiner Bokar: May I have that answer and question, please?

(Whereupon the last question and answer were read aloud by the reporter as above recorded.)

Trial Examiner Bokar: All right.

Q. (Mr. Walker continuing) Do you recall any discussion on any other article of Board's Exhibit 3?

A. No, I don't; not at that meeting. I don't remember any other discussions on that. Well,—to make my answer clear,—on any of the other contracts. Any other section except that one of the Warehousemen's.

(Testimony of James Landye.)

Q. After the proposed agreement,—

Mr. Ball: (Interrupting) Just a minute. Let me have the question and answer again. Apparently I didn't get the purport of the question and answer. Read it back, please.

Trial Examiner Bokat: Yes, read it back.

(Whereupon the last question and answer were read aloud by [391] the reporter as above recorded.)

Trial Examiner Bokat: I think he is referring clearly to Section 2.

Mr. Walker: Section 2 of Board's Exhibit 3.

Trial Examiner Bokat: Suppose you physically correct the record. The question of Mr. Ball, referring to Section 2.

Mr. Walker: I thought he meant Exhibit 2.

Trial Examiner Bokat: Article 2, Board's Exhibit 3.

(Discussion off the record.)

Q. (Mr. Walker continuing) After the proposed agreement had been discussed, what next occurred?

A. The company stated,—that is, Mr. Powell; he did all the talking,—that they were willing to deal with the Warehousemen's Union 206, as they had been recognized or certified by the National Labor Relations Board. Mr. Langford, I believe, or one of the clerks,—I think it was Mr. Langford,—

(Testimony of James Landye.)

Trial Examiner Bokar: One of the officers of the Clerks' union?

The Witness: Yes. Said, was there any question as to whether the company recognized the Retail Clerks, and Mr. Powell said, No, that they had accepted the letter,—the letters which had been exchanged,—as sufficient.

Q. You are now referring to Board's Exhibit 6. Is that correct?

A. He stated, the letter. Mr. Powell stated, the letter.

Mr. Ball: Well, that is 6. [392]

A. (continuing) —as sufficient of recognition of the Clerks, and there was no question about that.

Q. Now, did you request anything?

A. Yes. I first asked Mr. Powell, would they arbitrate the whole thing except the union shop; he said, No. I then asked him, would he agree to arbitrate everything, union shop and everything; and he said, No. About that time Mr. Glazier, of the Seattle Warehousemen, got up and left the room, stating that we weren't getting anywhere and that we were back to where we started; and somebody else followed him out of the room. And I said, "Well, will the company give us a counter proposal on all the contracts,—the Retail Clerks' and the Warehousemen's was before them, and we could get the Office Workers' over immediately, as soon as possible,—and would they get it back to us by Saturday morning, a counter proposal. Mr. Powell

(Testimony of James Landye.)

asked me exactly what I meant, and I stated that I wanted the company to take each section of the unions' contracts, and if they agreed, to write it out that way as a section, and if they disagreed, to delete it, and if they had any additions, to put it on the contract. I told them to make a complete contract, addressed to each union. I told them then we could meet the next day, Saturday; and we could take the contracts and we would have something to work from, a limitation placed on the issues. I told them that is the way business was ordinarily conducted. Mr. Powell—— [393]

Mr. Ball: (interrupting) It is understood that respondent is not bound by any reasons or arguments advanced by Mr. Landye in this discussion?

Trial Examiner Bokat: It is just what he claims he stated to Mr. Powell; setting forth testimony of the conduct of the parties.

Mr. Ball: Not received for any further probative purpose than the effect the words might have?

Trial Examiner Bokat: I can't tell, at this time, what weight I am going to give to the words, if any.

Do you want the last part of your answer read?

The Witness: Yes, please.

(Whereupon the last part of the answer referred to was read aloud by the reporter as above recorded.)

Mr. Ball: I move to strike that out in so far as it may represent as a fact that that is the way

(Testimony of James Landye.)

business is ordinarily done, or is attempting to show that is a fact.

Trial Examiner Bokat: I am merely accepting it as his testimony.

Q. (Mr. Walker continuing) During that discussion, Mr. Landye, did you make any gestures?

A. Oh, there was some, I suppose.

Trial Examiner Bokat: Now, had you finished your answer?

The Witness: No. I want to finish this other question.

Trial Examiner Bokat: I thought you hadn't finished it. [394] Do you want some more of your answer read?

The Witness: No; I have got it. Mr. Powell stated that the company was not asking anything from us, and that it was up to us to make proposals that would please the company; and that he said his conception of negotiations was that the company had no affirmative duty to do anything, and that it was up to the union to please the company. And he stated that they wouldn't submit a counter proposal.

Q. Was there any reference to any industry, other than the mail order business, at the time of your discussion which you have just related?

A. Well, Mr. Powell stated that that was not his conception of either negotiations or labor relations, for the company to make affirmative gestures, —or words to that effect. I stated to him that that

(Testimony of James Landye.)

was not so; that I had dealt with newspaper publishers for some four or five years, and that the newspaper publishers had dealt for fifty years, and that we never discussed anything with the newspaper publishers, or negotiations with the various crafts, until proposals and counter proposals had been exchanged so we could limit the issues. I told him at that time, I thought that would be the most efficient; that we could get somewhere.

Mr. Ball: I assume I have a standing objection to receiving any of the statements of Mr. Landye as to the truth of any of the facts that he told to Mr. Powell at that time. [395]

Trial Examiner Bokst: The record may so show.

Q. (Mr. Walker continuing) Did Mr. Powell say anything to that, other than which you have already related?

A. No. He just said that it wasn't up to the company to please the union. That may not be the exact words, but to that effect.

Mr. Ball: Well, I move to strike that out, therefore, as an opinion and conclusion of the witness as to what Mr. Powell said.

The Witness: Well, it was the same as he stated before.

Trial Examiner Bokst: With that modification, I will let it stand.

Q. (Mr. Walker continuing) Now was any other question asked of Mr. Powell relative to the agreement, or, to an agreement?

(Testimony of James Landye.)

A. No. I think that was about the end. The last thing I remember is his refusal on a counter proposal.

Mr. Ball: I move to strike out Mr. Landye's description.

Trial Examiner Bokat: Yes.

The Witness: All right.

Q. (Mr. Walker continuing) Now, Mr. Landye, going back to the meeting of September 19th. Was there any discussion with Mr. Powell, or Mr. Barth, in addition to the discussion over recognition and Section 1 of the agreement?

Mr. Ball: I object to this going back over matter which the witness has already stated and to which he has testified [396] fully.

Trial Examiner Bokat: I assume there is something else that Mr. Walker has in mind that the witness may not have testified to. I don't want him testifying on old matters.

Mr. Ball: The witness has testified,—if I recall the evidence,—that he has already stated everything he can recall about the meeting.

Trial Examiner Bokat: If Mr. Walker can refresh his recollection, he has a perfect right to do that.

The Witness: May I have the question?

(Whereupon the last question was read aloud by the reporter as above recorded.)

(Testimony of James Landye.)

The Witness: There was a discussion about the certification of the Warehousemen.

Q. (Mr. Walker continuing) And what was said about that?

A. Well, Mr. Powell stated about the company wanted to deal as a retail unit, and then the mail order side; and that is the way they conducted their business. And I told him that the Board, in the Warehousemen's case, had already overruled that contention, and that was no longer a matter of argument. I told him that in that case the warehousemen on the mail order side had been separated from the office workers, and that even some of the warehousemen in the Davis Street warehouse were actually working on the retail side; and I told him that the office workers went across from the retail to the wholesale [397] both; and then you had the warehousemen with a few men over in the retail; and that the Board had ruled in that case that they weren't separate units.

Q. Did Mr. Powell say anything to that?

A. He said he never heard of the case; and I told him when it was, and Mr. Barth,—either Mr. Barth or Mr. Barr,—between us we told him about the case. He said he didn't know about it at that time.

Q. Now, is there anything further on the meeting of December 13th that you have not related?

A. No, I don't recall. There was a lot of things going on; probably a lot of things.

(Testimony of James Landye.)

Cross Examination

Q. (Mr. Ball) Mr. Landye, before you went into the meeting of December 13th, you had already drawn the charges to be filed with the Labor Board?

A. Yes.

Q. And, of course, like a good lawyer, you had the charges in mind when you were framing your questions to Mr. Powell about counter proposals? Weren't you?

A. No, no; definitely no. We were trying to get the strike settled. That was important to me.

Q. The fact is, though, that you had filed charges with the Board for failure to bargain collectively, and had drawn them up? [398]

A. Oh, yes.

Q. Have you got a copy of the charges?

Trial Examiner Bokar: Attached to Board's Exhibit 1.

(Discussion off the record.)

Q. (Mr. Ball continuing) You will recall that on the meeting of December 13th, in discussion of your request of Mr. Powell that the company make a counter proposal, he did say that the company did have this to ask: That the employees go back to work?

A. Oh, yes. That came up at the first of the meeting. May I explain that?

Q. Yes.

(Testimony of James Landye.)

A. My recollection was not that that was brought up in the way of a counter proposal; that came up at the very first. It was said, Has the company got any proposal to make? I differentiate the two in my mind. And the company said, Yes; everybody go back to work and we would settle it.

Q. The word counter proposal means one thing to you, and it might mean,—

A. (Interrupting) No; it was not stated as a counter proposal. It was just stated, What has the company got to offer.

Mr. Ball: That is all of this witness.

(Witness excused.)

(Whereupon at 11:50 A. M. the hearing was recessed until 1:30 P. M.) [399]

Afternoon Session

(Whereupon, at 1:30 p. m. the hearing was resumed, pursuant to the taking of noon recess, as follows:)

Trial Examiner Bokat: The hearing will be in session.

Mr. Ball: Perhaps we could stipulate the Interstate Commerce part at this time.

Trial Examiner Bokat: That might be just as well.

Mr. Ball: It is stipulated between the parties, first, that Montgomery Ward & Co., Incorporated, hereinafter referred to as Ward's, is an Illinois Corporation, duly licensed to do business in the State of Oregon;

(2) Ward's is engaged in the sale and distribution of general merchandise at retail through the media of mail order houses and retail stores;

(3) Ward's operates nine mail order houses and 650 retail stores throughout the United States;

(4) Ward's operates a mail order house in the City of Portland, Oregon, and operates a retail store in Portland, Oregon;

(5) Approximately 1200 persons are presently employed at the Portland mail order house;

(6) Approximately 175 persons are presently employed at the Portland retail store;

(7) Approximately 90 per cent. of the merchandise handled both by the Portland mail order house and the Portland retail [400] store is shipped into Portland from points outside of the State of Oregon;

(8) Approximately 60 per cent. of the sales made by the Portland mail order house are delivered to customers outside of the State of Oregon, through deliveries in Portland, Oregon and through common carriers designated by the customers;

(9) More than 99½ per cent. of the sales made by the Portland retail store are delivered to the customers and completed within the State of Oregon;

(10) The Portland mail order house and retail store are operated as separate units, each having its own resident manager. The retail store manager reports to the Regional Manager in Oakland, California, who, in turn, is responsible to the Retail Operating Manager in Chicago, Illinois.

The mail order manager reports directly to the mail order operating manager in Chicago, Illinois.

(11) The Portland retail store sales amount to approximately three million dollars annually;

(12) The Portland mail order house sales amount to approximately thirteen million dollars annually.

Trial Examiner Bokat: Is that stipulation agreeable to you, Mr. Walker?

Mr. Walker: It is agreeable.

Trial Examiner Bokat: It is so stipulated.

Mr. Ball: The Respondent, in making this stipulation, [401] does not intend to admit the jurisdiction of the National Labor Relations Board over its retail store and retail store operations in the City of Portland, but it reaffirms its position that it does not deny the jurisdiction of the Board over its mail order house and its mail order operations.

Trial Examiner Bokat: Call your witness, Mr. Walker.

Mr. Walker: I will call Mr. Hicks.

JAMES HOWARD HICKS

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: James Howard Hicks, 1332 Southeast Rex.

Direct Examination

Q. (Mr. Walker) In Portland?

A. Portland, Oregon.

Q. Are you connected with any labor organization? A. Yes.

Mr. Ball: Can't we stipulate that he is?

Mr. Walker: That he is secretary-treasurer of the Office Employees' Union, Local 16821, affiliated with the American Federation of Labor?

Mr. Ball: I will stipulate to that.

Trial Examiner Bokat: It is so stipulated.

Q. (Mr. Walker, continuing) In that capacity, do you meet [402] or have you met with any of the representatives of Montgomery Ward & Company?

A. Yes, I have.

Q. When did you first meet with them?

A. The first meeting was only a brief meeting, in the office of Mr. Huddleston, the latter part of August or the fore part of last September. I was with Mr. Langford and Mr. Dixon.

Q. Now, what occurred at that meeting?

A. Briefly, as I stated before, the meeting was very short. We were assured by Mr. Huddleston

(Testimony of James Howard Hicks.)

that no negotiations were in progress at that time between the Company and the Warehousemen.

Q. Had you inquired about that of Mr. Huddleston? A. We did at that meeting.

Q. Was there anything else that took place at that meeting? A. No.

Q. After that, did you meet with any of the representatives of Montgomery Ward & Company?

A. Yes.

Q. When?

A. On the 22nd of August, the meeting which has been referred to before.

Q. October 22, you mean?

A. October 22, that is correct.

Q. Did you take any part in that meeting?

A. Very slight. [403]

Q. Just tell us about it.

A. I had a very minor participation. My only participation was to assure Mr. Barth, and the gentleman back there (pointing)——

Mr. Ball: Mr. Powell?

Trial Examiner Bokar: Which gentleman?

The Witness: I can't think of his name.

Mr. Ball: Mr. Powell?

The Witness: Mr. Powell, that is right.

Q. (Mr. Walker, continuing) Will you go ahead and relate what you did?

A. My part was just to assure them that the letter that they had received, signed by both Mr. Dixon and myself, was correct in its statement that

(Testimony of James Howard Hicks.)

the Retail Clerks could bargain for the office workers and their department.

Q. How did you happen to mention that?

A. Well, I think that they had asked me.

Q. Who?

A. Well, the letter had been mailed,—

Mr. Ball: I wish to strike any statement of the witness about the letter. The letter is in evidence, and speaks for itself.

Trial Examiner Bokat: Yes. I will be bound by what the letter says. I will disregard anything else as to its contents.

Q. (Mr. Walker, continuing) Had Mr. Powell asked you about that [404] at the meeting?

A. Yes.

Q. In response to his questions, you replied to him as you have just now indicated? A. Yes.

Q. What else did you say at that meeting?

Mr. Ball: I am not sure we know what is meant by “just as you have now indicated”.

Trial Examiner Bokat: Suppose you have him state what he said?

Q. (Mr. Walker, continuing) What did you say to Mr. Powell?

A. I assured Mr. Powell that my organization,—that we still did have jurisdiction over the Office Workers in the retail department, and that the negotiations, however, could be carried on with the Retail Clerks.

(Testimony of James Howard Hicks.)

Q. Was there anything else said by you at that meeting? A. No.

Q. Was there any discussion between you concerning the office workers at that meeting?

A. Yes.

Q. What was said?

A. Mr. Powell asked me approximately how many we had organized out there.

Q. Did you answer? A. Yes, I did. [405]

Q. What did you answer?

A. I told him that we had approximately two-thirds.

Q. Two-thirds of what?

A. Of the people under our jurisdiction.

Q. Was there any question put to you about who you represented? A. Not that I recall.

Q. Was there any discussion concerning what types of persons could come under your jurisdiction, or came under your jurisdiction?

A. I would say "no".

Mr. Ball: Will you read that last question and answer, please?

(Thereupon the last question and answer were read aloud by the reporter as above recorded.)

Q. (Mr. Walker, continuing) I call your attention to what has been marked as Board's Exhibit No. 6. Did the original of that bear your signature?

A. Yes, it did.

(Testimony of James Howard Hicks.)

Q. Was there any discussion concerning Board's Exhibit 6 at that meeting?

A. I can't say that there was; they acknowledged receipt of the letter.

Q. Who did? A. Mr. Powell.

Q. (Mr. Walker, continuing) Mr. Powell? [406]

A. Mr. Barth, through Mr. Powell.

Q. What else took place?

A. There was an endeavor to carry on negotiations between Mr. Dixon and Mr. Powell.

Q. Well, what do you mean by that?

A. I mean that they brought out the Retail Clerks' agreement as having been previously submitted, and they started out with the original understanding that they would go through the agreement, article by article.

Q. You are speaking about Board's Exhibit 7, is that correct? (Handing document to the witness)

A. This is the agreement that they submitted, (indicating), yes.

Q. After that, did you meet with any representatives of the company? A. Yes.

Q. When? A. On December 13.

Q. Was there any discussion concerning workers at that meeting?

A. I would say only in a general way, in so far as it applied to the three unions which were represented at that time.

Q. What do you mean by that?

A. Well, we were referred to as the representa-

(Testimony of James Howard Hicks.)

tives,—not the representatives,—but the Unions involved in the strike at that time in progress against the company. [407]

Q. Was there any discussion concerning the strike at that meeting? A. Yes, there was.

Q. What was it?

A. Well, it was acknowledged by the Unions that we were desirous of negotiating an agreement with the company. The company, through Mr. Powell, expressed a desire that the picket lines be removed, and that the normal operations of the company be allowed to follow their channels.

Mr. Ball: By the way, I will stipulate with you that this Board's Exhibit No. 10 can go in.

Mr. Walker: All right.

Trial Examiner Bokat: Do you want to offer it?

Mr. Walker: I will offer it.

Trial Examiner Bokat: Board's Exhibit 10 is received in evidence, without objection.

(Whereupon the document heretofore marked Board's Exhibit 10 for identification was received in evidence)

1810

DEPARTMENT STORE
WAGE SCALE AND AGREEMENT
of
RETAIL CLERKS UNION, LOCAL 1257
Retail Clerks International Protective Assn.

Between _____, of Portland, Oregon and Local No. 1257, Retail Clerks International Protective Association, of Portland, Oregon and affiliated with the American Federation of Labor.

THIS AGREEMENT, mutually made and entered into this _____ day of _____, 1940, by and between _____ of Portland, Oregon, Party of the First Part, and the Retail Clerks International Protective Assn., Local No. 1257, of Portland, Oregon, Party of the Second Part, to-wit:

SECTION 1. Employers shall be entitled to employ or hire any employees, provided, however, that such employee shall make application within two (2) weeks after being employed to become a member of the Union and if satisfactory to the employer and found worthy by the Union he will be admitted to full membership in the Union.

(a) A temporary working permit good for thirty (30) days only shall be secured by all new or extra salespeople, not members of the Union at the time of employment, provided they are employed more than one (1) day. No working permits shall be issued until all available regular employees of the company are restored to full time service if competent, and available. All new steady employees working half time or in excess, shall be issued a permit for thirty (30) days only, at the expiration of which time they shall affiliate with the Union provided, they are still employees half time or in excess. Regular extra employees who are employed less than half time shall secure a working permit from the Union the first of every month.

SECTION 2. All persons employed by the Party of the First Part who are actively engaged in selling shall be members of the Retail Clerks Union, Local No. 1257, and all other employees as designated by ensuing classifications shall be members of Local 1257. Window trimmers and assistants; mail order department employees; floor cashiers; outside salesman; marking room employees; bundle wrappers; and all other employees not coming under the jurisdiction of any other Union, except executives. The exception of the executives are to be agreed upon between the Business Representative of the Union and the Representative of the Employer.

SECTION 3. No male employee shall be discharged and replaced by a female employee unless the female employee shall receive the minimum wage for men as classified. This shall not apply when a male employee leaves the company of his own accord or is dismissed for good and sufficient reason.

SECTION 4. No regular full time and no regular part time employee shall suffer any reduction of pay or be required to make up any time for holidays, the following holidays to be observed: New Year's Day, Memorial Day, Fourth of July, Armistice Day, Labor Day, Christmas Day; and all other holidays nationally or locally observed by the stores parties to this agreement. When a holiday falls on Sunday the following Monday shall be observed.

SECTION 5. In the laying off of help due to slackness of business and in the consequent re-employment, seniority rights shall be observed.

SECTION 6. A mutually agreeable system shall be worked out between the employers, parties to this agreement, and the Union to permit the Union activities of receiving complaints and collecting dues during store hours, provided that such activities shall be conducted at reasonable times and so as not to interfere unreasonably with the conduct of the employers' business or to interrupt or interfere with the performance of work.

SECTION 7. There shall be no discrimination by the Employer against any employee or applicant on account of membership in or on behalf of the Union.

SECTION 8. Duty authorized representatives of the Union, not on the payroll of the employer, shall be permitted to visit the stores, for the purpose of observing conditions under which members of the Union are working, and to see that the agreement is observed; provided that such visits shall not be made during rush hours, and that the time of such visits shall be arranged with the employer. The Employer agrees to cooperate in arranging for such visits at reasonable times and to name two (2) or more persons in each store, each of whom shall have authority to make arrangements for such visits.

SECTION 9. The Employer shall provide in each store a bulletin board or boards, conveniently located, for the posting of notices of official business of the Union. The Union agrees that it will not distribute handbills, posters or other literature within the store. The Employer will provide a receptacle or receptacles, at or near such bulletin board in which the Union may place such notices of official business from 2 o'clock on.

SECTION 10. For the purposes of this agreement, employees are designated as follows: (a) Regular full-time employees; (b) Regular short-hour employees; (c) Extra employees. These are defined as follows:

(a) A regular full-time employee is one who has been employed to work a full number of hours each week. Any employee continuously employed on a full time basis by the Employer for at least six (6) months shall be considered a regular full-time employee.

(b) A regular short-hour employee is one who has been employed regularly less hours per week than a full working week. Any employee who has been continuously employed by the Employer on a short hour basis for at least six (6) months shall be considered a regular short-hour employee.

(c) An extra employee is one employed for temporary work.

(d) A break of service shall not prevent such service from being continuous under subdivisions (a) or (b) of this section, provided that six (6) months of actual service shall have been rendered within a total period of two (2) years from commencement of employment.

Experience shall be based on the total experience accumulated in retail stores or departments of the same classifications.

(e) It is understood and agreed that all of those employees who were employed as regular full-time employees, or regular short-time employees, as of _____, and who at the time of signing of this agreement, will not have had six (6) months service shall automatically be rated as regular status full-time employees, or regular short-hour employees as the case may be.

(f) The term "regular" used in this section refers to the status of an employee within the particular establishment in which he is working. To attain such regular status employee must have had six (6) months of continuous employment as defined above, with the same employer in Portland.

SECTION 11. (a) Each employee shall be provided with a card setting forth classification of employment, wage and daily schedule of hours of employment with the starting and finishing time for each day.

(b) Immediately after the signing of this agreement there shall be established a Classification Committee composed of three (3) representatives of the Employer and three (3) representatives of the Union. It shall be the duty of this Committee to pass on all matters pertaining to adjustments of the classification of employment.

SECTION 12. (a) Forty-four hours completed within six days shall constitute a week's work. Employees shall be placed on a straight time schedule of hours, such schedule to be entered on employees' classification cards. Before any change is made in any such schedule one week's notice shall be given to the employees affected, except in cases of emergency or where the change is mutually agreed to by the Employer and the employee affected.

(b) Overtime shall be paid for at the rate of time and one half.

(c) All sales or transactions are to be completed if they are taking place at the normal quitting time of the employee without payment of overtime.

(d) Overtime shall be paid for all work prior to 9:15 A.M. or after 5:45 P.M. as the case may be, and except in the case of those employees whose work must be necessarily be performed in whole or in part before 9 A.M. or after 5:45 P.M. as the case may be.

(1) Mail openers and distributors, sales audit clerks, cash register readers, stock distributors;



- (2) Extra wrappers, packers, parcel post and delivery employees who on Saturdays are required to report for duty after 1 PM.
- (3) Employees required for inventory work on one night in January and one night in July.

(c) Outside salesmen, collectors, appraisers and adjusters shall be exempt from all limitations of hours except when required to do inside work.

OK
SECTION 13. No one shall be sent to lunch prior to eleven (11:00) AM. Every employee shall be sent to lunch at least within five (5) hours of the time of their reporting to work. Any employee who works in excess of five (5) hours without a lunch period shall receive overtime for all such work performed in excess of five (5) hours. All sales or transactions shall be completed if they are taking place at the time the person is to go to lunch without the payment of overtime.

SECTION 14. When a company doctor pronounces an employee physically unfit to carry on their active duties as an employee, the employee shall have the right to demand an examination by an outside doctor supplied by the Union. If the two doctors are unable to agree on the diagnosis they shall call in a third doctor and the decision handed down by the third doctor shall be binding. The cost shall be borne equally by the employer and the Union.

OK
SECTION 15. (a) All regular employees who have been in the service of the Employer continuously for one year shall be granted a minimum of one week's vacation with pay. All regular employees who have been in the service of the Employer continuously for two years shall be granted a minimum of two week's vacation with pay. In cases where stores have vacation policies which are not in conflict with the foregoing said policies may be retained. Vacations shall be granted between April 1 and October 1 or at other times if mutually agreeable. This provision shall be effective after the current vacation schedule.

(b) In the case of regular short-hour employees pay for the vacation period shall be the average weekly pay received by such employee during the year preceeding the vacation.

(c) Leaves of absence or any employee called for government service shall be granted at the discretion of the Employer, and when so granted employee shall be assured of his return to employment without loss of standing.

SECTION 16. Employers shall have the right to discharge any employee for unbecoming conduct, insubordination, incompetency, neglect of duty, failure to perform work as required not contrary to the terms of this agreement, or to observe safety rules and regulations, or the employers' store rules, which shall be conspicuously posted. If an employee feels he has been unjustly discharged, he shall have the right to appeal to the Adjustment Board.

OK
SECTION 17. To insure that full and fair consideration be given all employees in filling vacancies or new positions, in making transfers, promotions, or wage increases, the Employer agrees to review regularly the records of all employees.

SECTION 18. It is understood and agreed that quota systems shall not be used as the sole basis for discharges.

OK
SECTION 19. Stock help shall be provided for the Women's Coat Departments, Yardage and blankets.

SECTION 20. (a) The Employer may require sales employees to do non-selling work providing that such assignments shall not be made during the peak hours and recognizing at all times the common interest of the Employer and of sales employees in the enjoyment by the latter of all reasonable and practically opportunities of effecting sales. It is further agreed that such assignments shall be equitably distributed between the various members of the department.

(b) The Employer may make temporary assignments of non-selling employees to do selling work during peak hours or seasons only, but keeping in mind also the common interest of the Employer and of the selling employees in the enjoyment by the latter of all reasonable and practicable opportunities of effecting sales.

SECTION 21. If compulsory sales or educational meetings are held they shall be on the Employers' time. Provided, however, that this does not apply to applicants who do not subsequently report for work.

SECTION 22. All contributions to charity shall be voluntary. It is understood and agreed that no compulsion shall be placed on the employee to force contributions.

SECTION 23. Not oftener than once a month sales employees, upon individual requests, shall be furnished with records of their sales, provided such sales are individually recorded.

SECTION 24. Department heads, buyers and assistant buyers, making sales shall enter the same on a department book, such sales to be divided equally among the employees in the department, provided, however, that where department heads, buyers and assistant buyers have their own books this principle shall not apply.

SECTION 25. An employee whose earning capacity is limited because of physical or mental handicap, or other infirmities, may be employed on suitable work at a wage agreeable to the Employer, the employee and the Union.

SECTION 26. (a) The Employer agrees to pay all fidelity bond premiums. All cash deposits or cash bonds in lieu of fidelity bonds now in force will be returned to the employees so affected at once. No employee shall be required to pay any premiums on public liability and property damage insurance required by the Employer, and covering the operation of an automobile while used in the Employer's business. Charges for physical examinations or sales training when required by the Employer shall be borne by the Employer.

(b) Any employee using his automobile for company service shall be compensated at the rate of five (5) cents per mile for all miles so used required by the Employer.

SECTION 27. The provisions of this agreement shall apply to all departments leased or subleased to others except where and so long as bona fide agreements or leases between the employers and lessees or sub-lessees in force at the date of this agreement do not permit such application. Subject to the exception stated in the preceding sentence of this paragraph, the provisions of this agreement shall also apply to employees acting as demonstrators or selling jointly for the Employer and others.

SECTION 28. Where the Employer requires employees to wear identical garb as to style or fashion, when such garb is not suitable for street wear, the Employer shall furnish the same. The Employer shall also provide for the maintenance of such garb.

SECTION 29. No more than one (1) apprentice shall be employed for each twenty (20) employees. These apprentices shall be reasonably divided among the different departments of the store, both selling and non-selling. It is agreed that an apprentice is an employee having less than six (6) months experience in the retail trade, who receives less than the minimum wages specified herein for experienced employees and not less than the minimum scale for apprentices as herein provided for. Time served in one or more stores as an apprentice shall be cumulative.

SECTION 30. No salary rate herein provided shall be considered other than a minimum wage, and no salary rate above the minimum provided herein shall be reduced.

Before any Employer terminates Group Insurance in effect at the signing of this agreement, he shall give thirty (30) days notice of his intention to terminate to the employees affected.

SECTION 31. The following are agreed classifications, minimum weekly and monthly rates of pay thereof, and special working conditions as listed under the specified classifications noted:

1. (a) Men's Clothing

\$23.00	First year experience
28.00	Second year experience.
32.00	Over three years experience.

(b) Men's Furnishings

\$22.50	First six months experience.
25.00	Second six months experience
27.50	Thereafter.

2. Shoe Department

(a) Every regular male employee shall receive a minimum wage of \$97.50 per week, or \$119.50 per month. Extra male help shall receive a minimum wage of \$5.00 per day.

(b) Every part time employee shall receive a minimum wage of seventy-five cents (\$.75) per hour if employee works less than a full day. Any employee shall not work less than four hours in any one day.

(c) Every female employee shall receive a minimum wage of \$22.50 per week, or \$47.60 per month.

(d) Every part time female employee shall receive a minimum wage based on the above minimum scale in proportion to the number of hours she works bears to the full day and shall not work less than four hours in any one day.

(e) Every apprentice shall receive a minimum wage as follows:

\$12.50 per week.	\$64.16 per mo.	First six months
17.80 per week.	78.83 per mo.	Second six months
22.50 per week.	97.50 per mo.	Third six months
25.00 per week.	103.33 per mo.	Fourth six months

(f) All wages, salaries and commissions in force at the time of the making of this contract, greater than the minimum wages guaranteed under this contract, shall be continued in force, and any attempt on the part of the employer to diminish or cut down such wages or either or both shall constitute a breach of this contract.

(g) Disregard the monthly pay clause if store is paying by the week.

(h) Any employee reporting for work at opening time shall receive a full day's pay.

3. Women's Ready to Wear and Corsets: Women employed in Ready to wear; suits, coats, silk dresses, corseteers, gloves, piece goods, blankets, draperies and hats shall receive the following scale:

\$16.00.	First six months experience
18.00.	Second six months experience
22.50.	Third six months experience
25.00.	Thereafter.

4. Miscellaneous Classifications: Service desk, candy, drugs, dry goods, wash dresses, lingerie, ladies underwear, infants wear, bargain room & markers:

\$16.00.	First six months experience
18.00.	Second six months experience
22.50.	Thereafter.

5. Hardware: Hardware, sporting goods and paints.

\$20.00.	First six months experience
25.00.	Second six months experience
27.50.	Third six months experience.
32.50.	Thereafter.

6. Jewelry: \$25.00 per week.

7. Household: Stoves, major appliance, radios, furniture and rugs.

There shall be minimum guarantee of \$36.00 per week for experienced men. The men to work on percentage basis with stipulated guarantee.

8. Stockmen and Farm Basement. \$32.50 per week.

9. City Delivery: Shipping Clerk. \$32.50 per week

Doormen. \$27.50 per week

Supervisor. 36.00 per week

10. Service Station:

Collectors and adjusters. \$27.50 per week

Service and repairs. 27.50 per week

11. Window trimmers and display men:

Combination employees, including window trimmers or those working in more than one department shall receive one-half of the difference between the two scales applying over and above the lower scale. This provision does not apply to employees whose work in an additional department is incidental and occasional. \$35.00 per week.

12. Farm equipment and plumbing:

\$25.00 per week. First six months experience

27.50 per week. Second six months experience

32.50 per week. Thereafter.

13. Catalog order desk:

16.00 per week. First six months experience

18.00 per week. Second six months experience

22.00 per week. Thereafter

14. Outside Salesmen: The outside salesmen shall be guaranteed a weekly drawing account of not less than \$25.00 and five cents (\$.05) mileage for all miles used for company service. Their hours will not be restricted.

INCREASE
No

15. Tires, Automobile parts and accessories:

\$25.00 per week.First six months experience
\$7.50 per week.Second six months experience
\$5.00 per week.Thereafter.

Purchasing Agent- Any employee designated as a Purchasing Agent actively engaged in the Parts Department handling parts shall be paid not less than One Hundred and Seventy-five dollars (\$175.00) per month.

Parts Manager - In charge of the Department and receiving in excess of one hundred and seventy-five dollars (\$175.00) shall not be subject to the terms of this agreement.

All parts departments and Accessories departments will close to the public between the hours of 5:45 PM and 9 AM.

SECTION 32. General Utility Employees: General Utility Employees shall be those employees not definitely regularly assigned to specific duties in any selling or non-selling department. They may be used at the discretion of the employer in any department of the store and for any duties, either selling or non-selling, as the occasion arises. Their number shall not exceed six (6) for the first one hundred (100) and five (5) for each one hundred (100) thereafter. The minimum pay for such employees shall be twenty-seven dollars and fifty cents (\$27.50).

SECTION 33. Extra Employees. All extra employees shall receive a differential of five cents (\$.05) per hour above the scale in the classification in which they work, with a guarantee of four (4) hours pay when ordered to report for work.

SECTION 34. Regular Short-Hour Employees: Regular short-hour employees shall receive the rate of pay provided for the classification in which they are employed.

SECTION 35. Apprentices: The minimum weekly wage for apprentices shall be not less than thirteen dollars (\$13.00).

SECTION 36. Assistant Buyers, Department Heads and Heads of Stock shall receive at least 10% increase in their guaranteed weekly rates above the maximum scale of their departments.

SECTION 37. All employees working split shifts shall receive one dollar (\$1.00) extra per day.

SECTION 38: (a) The monthly quota shall be for each month one-twelfth of the total yearly quota of the year from _____, to _____. Such monthly quota shall be maintained at the same figure for each month of the year. Deficiencies shall not be carried forward from one month to another. The present rate of commissions applicable to quotas shall not be reduced, nor shall any present rate of commission be reduced. Commissions shall be paid monthly.

(b) Those employees below the minimums herein provided shall be increased to such minimums, but in no case shall employees receive less than a 10% increase in their guaranteed weekly salary or weekly drawing account, up to and including employees receiving \$34.99 per week as a weekly minimum guarantee or a weekly drawing account.

SECTION 39: Immediately upon the signing of this agreement there shall be established an Adjustment Board made up of three (3) representatives of the Employer and three (3) representatives of the Union. The Board shall meet within ten (10) days of the signing of this agreement and select by mutual agreement a panel of five (5) impartial persons, any one of whom may act as arbitrator at such time as the Adjustment Board is unable to agree upon any matter referred to it.

If the parties hereto are unable to agree within twenty(20) days after the signing of this agreement to the panel of five(5) impartial persons who may be requested to act as arbitrators, _____ shall each be requested to designate three (3) persons who in their opinion are qualified to act as impartial arbitrators. From the total list so made up each party may strike two (2) names and the remaining names shall constitute the panel from which an arbitrator shall be selected as provided herein.

No arbitrator shall be chosen to serve in two consecutive arbitrations unless by mutual consent of the parties.

The Adjustment Board shall consider all complaints and disputes arising under the terms of this agreement, all questions of interpretation of the agreement and discharge cases. All discharge cases must be appealed to the Board within four (4) days from the date of discharge, otherwise the right to appeal is lost. The Board of Adjustment shall have no authority to negotiate a new agreement.

Any matter referred to the Adjustment Board shall be taken up by the Board within forty-eight (48) hours. If the Board is unable to reach a settlement within five (5) days then the matter shall be submitted for disposition to one of the persons on the panel of impartial arbitrators selected by lot. Any decision made by a majority of the Adjustment Board or as a result of arbitration, shall be accepted as final and binding. Any expenses incurred as the result of arbitration shall be borne one-half by the Union and one-half by the Employer.

SECTION 40: In consideration of the Employer signing this agreement and fulfilling the conditions thereof, the Association agrees to notify its membership, the Central Labor Council of Portland, Oregon and the District Council of the State of Oregon that the Employer herein has signed this collective bargaining agreement with the Association. The Association further agrees to loan to the Employer, Union Store Card No. _____ the property of an issued by the Retail Clerks International Protective Assn., affiliated with the American Federation of Labor, for the period this contract shall be full force and effect; provided, however, that the employer agrees to surrender said Union Store Card so loaned to him as aforesaid upon the expiration of this agreement, or upon demand made upon him by the Association, or upon violation of any provision or provisions of this agreement.

SECTION 41. This agreement shall be in full force and effect to and including the _____ day of _____, 1940; and shall be renewed for the following year and from year to year thereafter unless either party shall give written notice to the other at least sixty (60) days prior to any _____ day of _____, during the life of this agreement of a desire to amend this agreement.

If, after giving such notice and prior to the _____ day of _____ next ensuing, the parties shall fail to agree to such amendments, this agreement shall terminate at the expiration date; provided, however, that the parties may, by mutual written agreement, extend the agreement for a specified period beyond such expiration date for the continuance of negotiations; and ~~whereas~~ provided, further, that after either party has given such sixty (60) day written notice of a desire to amend the agreement, either party may, not less than twenty (20) days prior to the expiration date, give to the other party written notice that it desires to terminate the agreement at the expiration date, in which event the agreement shall so terminate at such expiration date.

IN WITNESS WHEREOF the parties have hereunto set their hands, duplicate, by their respective officers or representatives hereunto duly authorized at the City of Portland, State of Oregon.

FOR THE EMPLOYER

FOR THE UNION

(Testimony of James Howard Hicks.)

Q. (Mr. Walker, continuing) Mr. Hicks, will you refer to what has been marked as Board's Exhibit No. 11 and state what that is?

A. That is the agreement submitted to Montgomery Ward by the Office Employees' Union.

Q. When was it submitted?

A. If I recall correctly, the morning of the 13th.

Q. And to whom was it submitted? [408]

A. Mr. Powell.

Q. Did you attend the three meetings?

A. Yes.

Q. Each one of them? A. Yes.

Q. At any of the meetings, was there any discussion concerning Board's Exhibit 11 for identification?

A. Only at the last meeting, the meeting of the 16th.

Q. What was said concerning Board's Exhibit 11 for identification at that time?

A. Well, if I might reiterate for a moment, of course, it was understood that the Warehousemen's agreement was the first agreement to be discussed, and when we picked up this agreement which was the second one to be discussed, it was agreed that the articles which were similar to the articles in the Warehousemen's agreement,—that the comment that was given with reference to those similar articles in the Warehousemen's agreement, would apply to the articles in this agreement, correspondingly.

Q. Whom did you have that understanding with, or who had that understanding?

(Testimony of James Howard Hicks.)

A. It was generally understood by everyone present; it was in order to expedite matters.

Q. Was something said along that line?

A. Yes. [409]

Q. How was Board's Exhibit No. 11 discussed, or in what manner?

A. May I go through it and tell you?

Q. Surely.

A. Well, it was agreed that Article 2 in this agreement, which was the Union shop article, was opposed to company policy.

Trial Examiner Bokat: Will you speak a little louder, please?

The Witness: That Article 2, which was the Union shop agreement, was also opposed in this agreement, as it was in the Warehousemen's agreement, because it was contrary to company policy.

Q. (Mr. Walker, continuing) What did you do with it?

A. We just passed over it. Article 3, calling for the discharge of employees who were incapable or incompetent, that met with the general approval of the company.

Q. What do you mean by that?

A. Well, I am not positive that Mr. Powell made this remark on this article, but on numerous of the articles, it was stated by Mr. Powell that it would meet with the approval of the company providing the wording was changed to suit the company.

(Testimony of James Howard Hicks.)

Q. Did he indicate the way in which he desired it to be changed? A. No.

Q. Was there anything said to the representatives of the company?

Mr. Ball: Just a moment. I move to strike the last answer as being an opinion and conclusion of the witness, as to whether [410] or not he did indicate, because the testimony so far has shown that suggestions were made by the company which would indicate the manner in which the clauses could be written, and the answer of this witness is obviously a conclusion on this point.

Trial Examiner Bokar: I will ask that the witness be more specific in regard to Article 3. Can you be more specific in regard to what any representative of the company stated?

The Witness: I don't believe that I could be on this particular question.

Trial Examiner Bokar: Do you have any recollection that, in principle or substance, the company accepted Articles 2 and 3, or asked that the wording be modified or changed?

The Witness: I don't recall.

Q. (Mr. Walker, continuing) Was there any question about whether or not the agreement as a whole was agreeable or not agreeable? Was any such question put to any representatives of the respondent? A. Yes.

Q. Who asked that question?

(Testimony of James Howard Hicks.)

A. Mr. Langford of the Retail Clerks asked that question.

Q. When did he ask that question?

A. Before we went into the agreement itself.

Q. Was it answered?

A. Mr. Powell answered.

Q. How did he answer? [411]

A. In the negative.

Q. Now, after discussing Article 3, what next did you do?

A. I believe the next article to be discussed was Article 5, relating to holidays.

Q. What about Article 4?

A. I don't recall any discussion on Article 4.

Q. Was there any indication relative to Article 4, whether it was acceptable or not?

A. Not that I recall.

Q. What was said about it?

Mr. Ball: Just a minute. Will you read that previous question and answer, Mr. Reporter?

(Thereupon the answer and question referred to were read aloud as follows:

"Was there any indication relative to Article 4, whether it was acceptable or not?

"A. Not that I recall.")

Mr. Ball: I object to the question, and move to strike the answer. The way the question was formed, it obviously called for an opinion and conclusion of the witness.

(Testimony of James Howard Hicks.)

Trial Examiner Bokat: Will you reframe the question?

Q. (Mr. Walker, continuing) What disposition was made of Article 4?

Trial Examiner Bokat: If any?

A. I would say that the only disposition was that it was [412] passed over.

Q. (Mr. Walker, continuing) Was any reason given for it being passed over?

A. Not that I remember.

Trial Examiner Bokat: Mr. Walker, may I interject at this point and ask you if you feel it necessary to go through the paragraphs of the Office Employees' proposed contract, since the complaint does not allege that the respondent refused to bargain collectively with regard to this particular union?

Mr. Walker: I think that point is well taken.

Trial Examiner Bokat: There is no particular dispute, so far as the Office Employees' Union is concerned.

Incidentally, I understand that they happened to be present, but that particular union does not allege, nor complain that the company refused to bargain collectively.

Mr. Walker: That is correct, and the only purpose that I have is to show the pattern of the negotiations, such as they were.

Trial Examiner Bokat: I don't know whether it is really necessary. In other words, if you are

(Testimony of James Howard Hicks.)

going to have this witness take each paragraph and go into it, the respondent will then be compelled to set forth its version when it puts on its defense regarding that particular contract. I don't know whether it is necessary or not. I would like for you to give it a little thought. Maybe you want to discuss it with Mr. Landye, and, if so, I will be glad to declare a recess for that. [413]

Mr. Landye: I think that is a good suggestion.

Trial Examiner Bokat: I can see the purpose of it, that you may want to bring out the relationship that exists, but is it necessary to go into detail, or can you just have him state that certain paragraphs were discussed, that some were accepted and some were not?

Mr. Walker: I would be willing to do that, provided it might not be called a conclusion.

Trial Examiner Bokat: I understand that. Suppose you discuss it with Mr. Landye?

Mr. Walker: Might we do that off the record, a moment?

Trial Examiner Bokat: Yes, off the record.

(Discussion off the record.)

Q. (Mr. Walker, continuing) after the meetings of December 13, 14 and 16, was there any agreement between the respondent and the Union, as to any of the contracts? A. None whatsoever.

Mr. Ball: Now, just a minute. That is objected to, not only because it calls for an opinion and conclusion of the witness, but also because it

(Testimony of James Howard Hicks.)

does not tend to prove or disprove any issue in this case, and it is irrelevant to any issue in this case.

Trial Examiner Bokat: Probably you are right, as to whether any agreement was reached between the Office Employees' [414] Union and the respondent. That would be immaterial, because there is no allegation in the complaint that the company refuses to bargain collectively with the Office Employees' Union. I do think, however, in view of the fact that this Office Employees' representative was present and submitted a contract, the record should show whether or not an agreement was reached between the Office Employees and the company.

Mr. Ball: You notice how he phrased the question?

Trial Examiner Bokat: What are you willing to stipulate to, Mr. Ball?

Mr. Ball: I am willing to agree that the end of the session came without any final agreement being entered into between the parties.

Mr. Landye: That is satisfactory.

Mr. Walker: That is fair enough.

Mr. Ball: As distinct from any agreement on any section.

Mr. Walker: I am willing to stipulate to that.

Mr. Landye: That is all right.

Trial Examiner Bokat: Well, if you will accept that, there is no use questioning the witness about it.

Mr. Walker: Then the previous question and

(Testimony of James Howard Hicks.)

answer can be stricken, in so far as I am concerned.

Trial Examiner Bokat: Yes. The previous question and answer will be stricken.

Why don't you offer the contract in evidence?

[415]

Mr. Ball: I have no objection.

Mr. Walker: I offer Board's Exhibit 11.

Trial Examiner Bokat: There being no objection, it will be received in evidence and marked as Board's Exhibit 11.

(Whereupon the document hereinabove referred to was marked and received in evidence as Board's Exhibit 11.)

BOARD'S EXHIBIT NO. 11

WAGE SCALE and WORKING AGREEMENT

This Agreement, made and entered into this..... day of....., 194....., by and between Montgomery Ward & Company of the City of Portland, State of Oregon, hereinafter referred to as the Company, and the Office Employees Union No. 16821, of the City of Portland, State of Oregon, affiliated with the American Federation of Labor, hereinafter referred to as the Union, for the purpose of fixing the wage scale, schedule of hours and general rules and regulations between the Company and the Union, and clearly to define mutual obligations between the parties hereto.

(Testimony of James Howard Hicks.)

Witnesseth

Article 1. Jurisdiction of the Union shall include the following work: stenographic, bookkeeping, office clerking, billing, filing, statistical, accounting, auditing, and all office operations not included in the jurisdiction of any other national or international union affiliated to the American Federation of Labor.

Article 2. The Company shall be entitled to hire new employes for permanent employment; however, such employes shall make application within two months after being employed to become a member of the Union, and if satisfactory to the employer and found worthy by the Union after two months' employment, he or she will be admitted to full membership in the Union. All office workers in the employ of the Company who are not members of the Union shall secure a permit to work under the jurisdiction of the Union for the duration of their employment. Permits shall not be issued for longer than two consecutive months.

Article 3. The Company reserves the right to discharge any persons in their employ if incapable or incompetent, provided that any discharged employe shall have the right to appeal such discharge.

Article 4. No person shall be discharged or discriminated against for upholding Union principles, and any person who works under the instruction of the Union, or who serves on a committee, shall not

(Testimony of James Howard Hicks.)

lose his position or be discriminated against for this reason.

Article 5. The following days shall be considered as holidays: New Years' Day, Memorial Day, Fourth of July, Labor Day, Armistice Day (if generally observed by local, downtown merchants), Thanksgiving Day and Christmas Day. For all holidays other than Sundays, employes shall be paid the same wage as though he or she had worked his or her regular shift on that day.

Article 6. Any person now receiving a higher rate of wages than provided for in this agreement shall suffer no decrease in wages or reduction in position, and no clause in this agreement shall be understood to imply a lowering of the working conditions heretofore existing in the office.

Article 7. Eight (8) hours shall constitute a day's work and five (5) days shall constitute a week's work. All overtime after the eighth hour and after the fortieth hour shall be paid for at the rate of time and one-half. All Sunday and holiday work shall be paid at the rate of time and one-half. It is further agreed that lunch hours shall not exceed one hour in duration. All employes reporting for work on any given day shall be assured of not less than four (4) hours' work.

(Testimony of James Howard Hicks.)

Article 8. The following is the minimum scale of wages mutually agreed upon:

Office worker having two years' experience.....	\$25.50
Office worker having one year's experience.....	22.60
Office worker having not less than six months' experience	20.60
Office worker apprentice having less than six months' experience	18.60

Union members who act as temporary instructors and supervisors shall be paid on the salary basis of 10% above the schedule of wages herein set forth.

Temporary and part time employes shall be paid wages based upon the above schedule.

Article 9. New employes with two years' experience in the aggregate shall begin on a salary base of one year's experience.

Article 10. No employer shall have more than one apprentice for each four (4) employes or fraction thereof.

Article 11. The wage scales specified above shall be the basic scales during the life of this agreement and shall be adjusted in accordance with the changes in the cost of living, as shown by the Index of the Cost of Living for Portland, Oregon, issued by the United States Bureau of Labor Statistics. Such adjustment shall automatically be determined by the application of the following formula: Multiply the basic scales as above specified, by the effective index number as of the date of the adjustment, and divide by the index number for September 15, 1940. Provided, however, no ad-

(Testimony of James Howard Hicks.)

justment shall be made except where such change in the cost of living will result in a change in the wage scales of at least five (5) per cent. Provided further, if at the time of the execution of this agreement, living costs as shown by such index number have fluctuated subsequent to September 15, 1940, to such an extent that the basic wage scales, as provided above, will be changed by five (5) per cent, or more, upon application of the above-mentioned formula, adjustment of such wage scales shall immediately be made and shall be put into effect. Provided no adjustment of wage scales, as in this article provided, shall result in wage scales below the minimum scales set forth in Article 8 hereof.

Article 12. All employes shall be granted two weeks' vacation with pay at the conclusion of the second year of employment. Employes with less than two years' but more than one year of service with the Company shall be allowed one week's vacation with pay. All vacations shall be taken between May first and October first of any calendar year, subject to change by agreement between the individual and the Company. Vacations of all employes shall be scheduled prior to May first with the exception of those who will complete their first or second year of service during the afore-mentioned vacation.

Article 13. In the event it becomes necessary to reduce the office force the practice shall be followed of first releasing those employes with least seniority, provided those left are capable of doing the work.

(Testimony of James Howard Hicks.)

In rehiring, employes shall be returned to work in the reverse order in which they were released. In promotions within the office consideration shall be given to length of service and new employes shall not be hired for higher positions where present employes in lower positions are capable of filling the higher positions.

Article 14. All employes shall be granted two (2) days' sick leave each month without alteration of pay.

Article 15. All female employes shall be granted fifteen minutes each morning and afternoon as a relief period which time shall be allowed on regular working schedules.

Article 16. It is agreed that any employe of the Company drafted or conscripted for Federal defense service shall not lose his, or her, seniority or position with the Company. It is understood that all drafted or conscripted employes shall be returned to their rightful status with the Company at the conclusion of such service; however, any employes returning to the employ of the Company who are not physically or mentally able to resume their previous position shall be placed in other positions if possible.

Article 17. Any dispute that may arise as to the true interpretation of this agreement or any appeal from a discharge shall be submitted to a committee consisting of one (1) member representing the Company and one (1) member representing the Union; and, if they cannot agree, the two (2) chosen

(Testimony of James Howard Hicks.)

representatives shall select a third disinterested party within one (1) week. The findings of this Board, which shall be made with all reasonable dispatch, shall be binding on both parties to this agreement. It is further understood and agreed that there will be no strike or lockout until all means to settle the dispute have been attempted. It is further understood that the duly-authorized representatives of the Union shall have the authority on behalf of the Union to execute the terms of this agreement and to represent members of the Union in all matters growing out of this agreement.

Article 18. The Company agrees that, as a condition of employment, all employes will maintain membership in good standing in the Union, and that employers shall be notified of their employes' delinquency in such regard.

Article 19. This agreement shall be in full force and effect to and including the.....day of, 194....., and shall be renewed for the following year and from year to year thereafter unless either party shall give written notice to the other at least thirty (30) days prior to anyday of.....during the life of this agreement of a desire to amend this agreement. It is agreed that this agreement shall remain in full force and effect for such reasonable time thereafter as shall be required for the negotiation of such amendments or new agreement.

(Testimony of James Howard Hicks.)

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day hereinabove first written.

MONTGOMERY WARD & COMPANY:

By

OFFICE EMPLOYEES UNION No. 16821:

By

Countersigned:

CENTRAL LABOR COUNCIL OF

PORTLAND & VICINITY

By.....

(Whereupon a document was marked as Board's Exhibit 12 for identification.)

Q. (Mr. Walker, continuing) I hand you what has been marked as Board's Exhibit 12 for identification, and ask you if you have seen that before?

A. Yes, I have.

Q. Has that been in your possession at any time?

A. Yes, it has.

Q. When did it first come into your possession?

A. At the meeting in Mr. Huddleston's office on the morning of December 16.

Q. Whose handwriting appears on the face of it?

A. In every instance, it is mine.

(Testimony of James Howard Hicks.)

Q. When did you put the pencil writing on there?

A. At the time of the discussion of this particular agreement.

Mr. Ball: May I have the opportunity now of looking at that?

Trial Examiner Bokat: Certainly.

I assume that you are either going to question the witness about it, or offer it in evidence. Why don't you ask [416] counsel if he has any objection to it being received, or do you wish to have the witness explain some of the notations?

Mr. Walker: Yes, I wish to have him explain some markings on the exhibit.

Trial Examiner Bokat: All right.

Q. (Mr. Walker, continuing) Mr. Hicks, I call your attention to your writing which appears immediately above Article 1 on Board's Exhibit 12 for identification. Is that your handwriting?

A. That is correct; that is my handwriting.

Mr. Ball: I will stipulate that that is his handwriting.

Q. (Mr. Walker, continuing) What does the word "out" mean as it appears written across several clauses of Board's Exhibit 12 for identification?

A. There (indicating)?

Q. Yes. A. That is out.

Q. What does it mean?

A. It means that Mr. Powell definitely was opposed to that paragraph or section, and, as a consequence, I wrote over the entire article "Out".

(Testimony of James Howard Hicks.)

Q. Does that same explanation apply to every place where that word appears throughout Board's Exhibit 12 for identification?

A. I would say "yes".

Mr. Walker: I will offer in evidence what has been marked [417] as Board's Exhibit 12 for identification.

Mr. Ball: No objection.

Trial Examiner Bokat: There being no objection, it will be received and marked in evidence as Board's Exhibit 12 .

(Whereupon the document heretofore marked as Board's Exhibit 12 for identification, was received in evidence.)

A G R E E M E N T

This agreement made and entered into this _____ day of _____ 1946,
by and between MONTGOMERY WARD & COMPANY, hereinafter called the Employer, and the
WAREHOUSEMEN'S UNION LOCAL #296, I.B. of T.C.W. & H. of America, A.F. of L. hereinafter
called the Union. *(John Montgomery Ward & Co. Inc.)*

~~Article 1.~~ The employer agrees to recognize the Union as sole collective bargaining agency for the employees performing work in the classifications listed below in Article 4. of this agreement. No superintendent having authority from the Employer to hire or discharge men or women shall be a member of this Union.

ARTICLE 2. The Employer agrees to give preference of employment to unemployed members of the Union and in the event the Union is unable to furnish satisfactory help upon the request of the Employer, he (the Employer) may employ a non-member of the Union provided such person makes application for membership in the Union within seven (7) days after taking employment.

ARTICLE 5. Section 1. Eight (8) hours within nine (9) consecutive hours shall constitute a day's work. Forty (40) hours ~~constituting eight (8) hours, Monday to Friday inclusive,~~ shall constitute a week's work.

Sec. 2. ~~Eight~~ time shall be any eight (8) consecutive hours from 8:00 a.m. to 6:00 p.m. Monday to Friday inclusive. All other time shall be at the overtime rate as established in Article 5 of this agreement.

Sec. 3. Any work performed on any of the following named holidays shall be at the overtime rate of time and one-half as established in Article 5. of this agreement: - ~~Saturdays, Sundays, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, ~~Christmas Day~~, Thanksgiving Day, and Christmas Day.~~

ARTICLE 4. The following shall be the minimum wages paid in their respective classifications:

STOCK ROOM

Stockman	\$35.00 per week
Assistant Stockman	32.50 " "
Stock helper, male	30.00 " "
Stock Order Filler, packer & checker	30.00 " "
Warehousemen	33.50 " "

SCHEDULE ACTIVITY

Heavy Pit Order Filler	32.50 per week
House Sale Order Filler "C" line	30.00 " "
House Sale Order filler "A" & "B" line	28.50 " "
Order filler, checker, wrapper, women	25.00 " "
Packer - - - - - men	28.50 " "
Packer - - - - - women	25.00 " "
Correction clerks - - - - - men	32.50 " "
Correction clerks - - - - - women	27.50 " "
Production Control Clerk	30.00 " "
Outline Clerk	25.00 " "
Mailable Pit Order filler & Part lot packer.	30.00 " "

EXAMINATION

Examiner "C" line	35.00 per week
Assistant Examiner "C" line	32.50 " "
Examiner "A" & "B" line.	27.50 " "
Stock preparation - - - - - women	25.00 " "
Stock preparation - - - - - men	28.50 " "

PACKING & BILLING

Sorter	22.50 per week
Completer	27.50 " "
Packers - - - - - men	30.00 " "
Packers - - - - - women	27.50 " "
Scalers, Multiple	22.50 " "
" Single.	25.00 " "
" Pit Scaler.	27.50 " "
Billers, Multiple.	26.00 " "
" Single.	25.00 " "
" C. O. D. Biller.	27.50 " "
Error Correction Clerk	27.50 " "
Diverted Order Clerk	27.50 " "
Belt Inspector	22.50 " "
Refund Control Clerk	25.00 " "
Large Refund Control Clerk	25.00 " "

*Co. not in
position to
grant increase
"Powell"*

NAI-NAT. IN. C. L. A. S. I. D. A. D. 12
4-16-41
W. H. ROSS, OFFICIAL REPORTER
W. H. ROSS

PREFERRED ATTENTION ORDER UNITS

Completer	\$28.50 per week
Packer	30.00 " "
Billor	28.00 " "
Preferred Attention Scaler	27.50 " "

SHIPPING & RECEIVING FLOOR

Shipping & Receiving Clerks	35.00 per week
Checker	37.50 " "
Elevator Opr. & Car unloading	32.50 " "
Car Loaders	37.50 " "

PACKAGE OPENING UNIT

Sign-up clerks- - - - - women	27.50 per week
Sign-up clerks - - - - - men	32.50 " "
Stock preparation girls	25.00 " "

RETAIL CITY DELIVERY

Shipping clerks	35.00 per week
Receiving clerks	35.00 " "
Checker	35.00 " "

FELT ROOM CUTTING UNIT

Stockman	35.00 per week
Assistant stockman	32.50 " "

Pipe shop order filler & stockmen	35.00 per week
Porters	27.50 " "

Technical Shade Cutter	35.00 per week
Technical Asst. Shade Cutter	32.50 " "
Linoleum Cutter	35.00 " "
Crator	30.00 " "

Tailloresses	26.50 per week
Head Tailloress	28.50 " "

Any wages now being paid above the minimum provided for herein shall not be reduced for any ~~adjustment of disunity or differences in classifications will be settled through the Board of Adjustment provided for in Article 13 of this agreement.~~

Step 1. 100% of operation of this agreement
 ARTICLE 5. The overtime rate of pay shall be time and one-half (1½). No trading of overtime for time off.

ARTICLE 6. In the event that the Employer does not at present employ a working foreman, forelady, supervisor, or instructor, it is agreed that if one is employed, he or she shall receive fifty (50) cents a day above the rate of pay for the highest classification herein contained.

ARTICLE 7. If employees are worked over five (5) consecutive hours without a meal period, all time in excess of ~~such~~ hours without such meal period shall be at the overtime rate. Meal periods shall be so arranged as not to interfere with the normal operation of the business.

ARTICLE 8. Section 1. *There* shall be no discrimination against any employees for Union activity or membership.

Sec. 2. The Employer shall have the right to discharge any employees for insubordination, drunkenness, incompetence or failure to perform work as required or to observe safety rules and regulations and the Employer's house rules, which shall be conspicuously posted. In the event any employee feels he or she has been discriminated against or unjustly discharged, he or she shall have a right to review his or her case by the Board of Adjustment, as set forth in Article 13. of this agreement. In the event the Board of Adjustment finds the discharge to have been unjustifiable, said Board shall order reinstatement of such employee with full payment for lost time.

Sec. 3. *Where* the employer requests an additional medical examination of an employee, and there is a doubt in the mind of the employee as to the proper diagnosis of his or her case, the Union shall request a further examination by an impartial examiner, (to be paid by the Union). In the event both medical examiners do not agree in their findings it is further agreed that a third examiner shall be called for a final decision; said expense to be equally divided between the Employer and the Union, and the employee either returned to work with back pay or dismissed. Now employees must have physical examination within thirty (30) days.

ARTICLE 9. Lay-offs: If the work becomes slack and the Employer deems it advisable to reduce forces, employees who have been employed less than six (6) months shall be laid off first. If after all the men or women who have been employed less than six (6) months have been laid off, the Employer considers it desirable to take further measures, further lay-offs shall be in accordance with the seniority of the various employees on each floor.

In rehiring, those employees laid off last will be rehired first, and no new employees will be hired until the list of former employees is exhausted.

Seniority at Montgomery Ward & Company's main store in Portland will be as follows: Employees now employed will have preference over employees transferred from other warehouses regardless of length of time employees at other warehouses might have with the Company. Any employees transferred from other warehouses to the main store must draw the scale provided in this agreement for extra employees. In case of lay-offs employees coming in from other warehouses will be the first to be laid off.

ARTICLE 10. Employers shall adhere to their past practice of granting vacations but in no case shall a vacation be less than one week with full pay each year.

ARTICLE 11. Strikes: The Union agrees not to engage in any strikes or stoppage of work. The Employer agrees not to engage in any lockout. Any action of the employees leaving jobs for their own protection in cases of a legally declared strike by some Union directly working on the job, if said strike is sanctioned and approved by the Portland Central Labor Council, shall not constitute a violation of this clause of this agreement.

ARTICLE 12. Any person receiving wages or conditions or periods of vacation in excess of the minimums set forth herein shall not have any such benefits taken away from them, because of the signing of this agreement. All holidays, when not worked, shall be paid for as an eight hour day. When holidays are worked, the rate of pay shall be time and one-half (1½). *If working before & after holidays*

ARTICLE 13. A Board of Adjustment is hereby created to be composed of two (2) representatives of each contracting party. Said Board shall organize at once and shall elect a Chairman and Secretary and shall have the power to adjust any differences that may arise between the parties hereto regarding the meaning or enforcement of this agreement. Said Board shall meet for consideration of all matters that may be referred to it within forty-eight (48) hours subsequent to receipt by its Secretary by notice of same. The Board's decision shall be signed by a majority of the Board. If the Board cannot agree on any question referred to it within forty-eight hours, they shall then choose a fifth member who shall have no connection with either contracting party and the decision of a majority of the Board of five shall be final and binding on both parties. Pending the decision of any question referred to the Board, work shall be continued in accordance with the provisions of this contract.

ARTICLE 14. This agreement shall go into effect the ___ day of _____ 1940, and remain in effect until the ___ day of _____ 1941, and thereafter subject to thirty (30) days' notice of a desire to change by either party. If notice to desire to change or modify this agreement is served as hereinabove provided, negotiations shall start twenty (20) days from the date such notice is received.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first hereinabove written.

MONTGOMERY WARD & COMPANY

WAREHOUSEMEN'S UNION LOCAL #206

*ent. by
C. Taber*

(Testimony of James Howard Hicks.)

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Landye) Mr. Hicks, you have members of applications for membership in the retail store of Montgomery Ward? A. Yes.

Q. And you have membership or applications for membership on the mail order side?

A. That is right.

Q. Now, at any time has the Office Workers' Union waived jurisdiction over the employees on the retail store side?

Mr. Ball: I will object to that as calling for a conclusion of the witness on a matter that has no bearing on any issue in this case.

Mr. Landye: It goes to the unit, which is very important.

Trial Examiner Bokat: It affects the Retail Clerks' unit?

Mr. Landye: I have asked him if at any time the Office Employees have waived jurisdiction over the office employees on the retail side of the store.

[418]

Trial Examiner Bokat: I will overrule the objection. A. Not jurisdiction, no.

Q. (Mr. Landye, continuing) At your second meeting,—I am talking about the meeting of October 22,—was that the first time that you met Mr. Powell? A. That is right.

Q. Did you tell Mr. Powell that you represented the office workers or did anyone else tell him that?

(Testimony of James Howard Hicks.)

A. I would say "yes". I came in as a representative of the Office Employees' Union.

Q. Did either you or anyone else tell Mr. Powell that you represented the Office Workers at that meeting?

A. Yes.

Q. Who told that to him, if you recall?

A. Mr. Dixon and Mr. Langford.

Mr. Landye: I think that is all.

Cross Examination

Q. (Mr. Ball) At this meeting of October 22, you will recall that Mr. Powell asked you exactly the number of retail store employees you had signed up in your union, and you replied "25"?

A. I don't recall giving any specific number.

Q. Now, isn't it a fact that two-thirds of the retail store employees did approximate 25 in your computation at that time? [419]

A. No.

Q. Well, how many retail store employees did you have signed up at that time?

A. I had approximately 30.

Q. Have you any records that show that at that meeting on October 22 you had so many members signed? Is there any record anywhere that would show just how many you did have signed up, with which you could refresh your recollection?

A. Only by going over the application blanks, and then the dates might or might not be on the blanks.

Q. So you have no way to refresh your recol-

(Testimony of James Howard Hicks.)

lection as to whether it was 25 or 30 members at the meeting of October 22 amongst the retail employees of Montgomery Ward & Company?

A. Not as to the actual number, to be absolutely correct.

Trial Examiner Bokat: There isn't so much variance between 25 and 30.

Mr. Ball: That is true, but there is a question of whether he did say "25" or "30".

Trial Examiner Bokat: Yes, I understand that. The figure, however, is not off very far, either way.

Mr. Ball: I have nothing further.

Trial Examiner Bokat: Any redirect?

Mr. Walker: No.

Trial Examiner Bokat: The witness is excused.

(Witness excused) [420]

Mr. Walker: I will call Mr. W. A. McGowan. I will call Mr. McGowan as an adverse witness.

W. A. McGOWAN,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: William A. McGowan.

Trial Examiner Bokat: How do you spell it?

(Testimony of W. A. McGowan.)

The Witness: M-c-G-ow-a-n (spelling).

Trial Examiner Bokar: And what is your address?

The Witness: 2914 Northeast 64th Avenue.

Direct Examination

Q. (Mr. Walker) What is your occupation?

A. Operating Superintendent of the Fifth Floor.

Q. Where? A. Montgomery Ward.

Q. In Portland? A. Yes.

Q. Retail Store?

A. No, sir; Mail Order.

Mr. Ball: May I make a statement for the record at this time? Although I requested of Mr. Walker that, in providing the names of our supervisors whom he claimed had made statements which constitute 8-1 violations and Mr. McGowan's name was [421] furnished to me, Mr. Walker did not give me the names of the parties to whom the statements were supposed to have been made. So, I have not consulted with or taken the matter up with Mr. McGowan, and have not had any opportunity to examine into any records or facts he might have as to any conferences with any specifically named people.

Trial Examiner Bokar: In order that the record may be clear as to what we are talking about, because I don't believe there is any reference in the record that the Board has supplied any information to the respondent, let the record show that early in the hearing, in an off-the-record discussion the Ex-

(Testimony of W. A. McGowan.)

aminer had with Mr. Ball, Mr. Walker and Mr. Landye, I believe I asked Mr. Walker,—at least someone did,—whether or not the Board was going to introduce or adduce some proof concerning independent 8-1 statements, and Mr. Walker indicated that he probably had 2 or 3 witnesses on that point. Is that correct?

Mr. Walker: That is correct.

Trial Examiner Bokar: Mr. Ball at that time interjected with the statement that he had not received any advance information, because the complaint did not specifically allege any independent 8-1 matter, but merely had a phrase which stated “and by various other acts” did interfere with the rights of the employees.

At my request, Mr. Walker promised to supply Mr. Ball with certain information as to the names of the supervisors who were [422] allegedly involved in the so-called independent 8-1 statements or incidents. Is that correct?

Mr. Walker: That is correct.

Mr. Ball: Yes, but I didn't understand that the Examiner limited it to the providing of the names, but with information such as a bill of particulars would furnish,——

Trial Examiner Bokar: Certain information?

Mr. Ball: Yes.

Trial Examiner Bokar: I now learn for the first time that you have received the names of the supervisors who may have been involved.

(Testimony of W. A. McGowan.)

Mr. Ball: At that time it was provided that Mr. Walker should give me the names of the parties who made the statements, and I understood, the names of the parties to whom the statements were made.

Mr. Walker: No, that is not correct.

Mr. Ball: Let me put it this way: Mr. Walker was asked whether he would give me the names of the parties to whom the statements were made, and he stated that he didn't have the information correctly assembled at that time.

Trial Examiner Bokat: All right, what is the point that you wish to make?

Mr. Ball: The point is that Mr. McGowan was called without any advance information on my part as to whom he is supposed to have made any statements. Therefore, I am going to ask to [423] reserve cross examination, if necessary, until I have had an opportunity to examine into the facts.

Trial Examiner Bokat: I was going to make the suggestion that, after the direct examination of Mr. McGowan is concluded, you be given an opportunity to discuss with him any matter which you may desire to discuss, and, if you desire, to put off your examination until a later time in order that you may have an opportunity to conduct your cross examination, if you want to call it that.

Q. (Mr. Walker, continuing) Approximately how many employees are under your charge?

A. That varies with the different seasons of the year.

(Testimony of W. A. McGowan.)

Q. What is approximately the low point?

A. I would say around 45.

Q. How many do you have at the high point?

A. Around 54.

Q. What are your duties as a floor supervisor; is that correct; is that your correct designation?

A. That is right.

Mr. Ball: Will you speak more loudly, please?

The Witness: I will try. You wanted to know what my duties are as floor supervisor?

Q. (Mr. Walker, continuing) Yes.

A. I have charge of the people on the floor, and take charge of all the merchandise coming in and out, and have personal super- [424] vision over everyone that is on the floor.

Q. You are responsible for seeing that there is a flow of goods to be worked on by the people in your department, to see that it gets into the department, and also responsible for the flow of the goods out again?

Mr. Ball: What is the purpose of this? What do you want to prove?

Trial Examiner Bokar: He just wants to find out what his duties are.

A. As to the merchandise that comes onto the floor, I have no control of that; as to the flow off, that is taken care of by the amount of receipts that we receive on the floor any day of the week.

Q. (Mr. Walker, continuing) Now, do you re-

(Testimony of W. A. McGowan.)

call the incident of the strike taking place at the store on December 7? A. Yes.

Q. Who is your immediate superior? Whom are you responsible to?

A. Mr. Brooks at the present time.

Trial Examiner Bokar: How do you spell that?

The Witness: Brooks, B-r-o-o-k-s (spelling).

Q. (Mr. Walker, continuing) What is his position?

A. He is the operating superintendent; superintendent of operations: let me correct that, please.

Q. Within the week immediately following December 7, did you [425] call on some of the employees in your department? A. Yes.

Q. Who asked you to do that?

A. Why, I was given a list of some of the employees in my department, to contact them by telephone, which I did.

Q. Who gave you the list?

A. It was furnished to me by my superior at that time.

Trial Examiner Bokar: Who was your superior, Mr. Brooks?

The Witness: No, Mr. Brooks was not here; it was Mr. Robinson.

Trial Examiner Bokar: Who was Mr. Robinson?

The Witness: Mr. Robinson was my superior. He was there at that time.

(Testimony of W. A. McGowan.)

Q. (Mr. Walker, continuing) What did he tell you?

A. What he told me was to get in contact with these people over the phone.

Q. What else did he tell you?

A. The wording I was to give to them was that, as they had not appeared for work on Saturday, I was to inform them that the Company was going to operate on Monday as usual, and that their job was waiting for them if they cared to come back.

Q. Who furnished you with the wording of that?

A. Mr. Robinson.

Q. Did you call them?

A. Yes, I called them.

Q. As you talked to them over the phone, did you read off the [426] slip?

A. Off the slip, yes.

Q. What department were the employees in that were notified, according to this list given you by Mr. Robinson?

Trial Examiner Bokar: Will you read the previous answer, as to what he read off?

(Thereupon the answer of the witness referred to was read aloud by the reporter as follows:

“A. The wording I was to give to them was that, as they had not appeared for work on Saturday, I was to inform them that the Company was going to operate on Monday as usual,

(Testimony of W. A. McGowan.)

and that their jobs was waiting for them if they cared to come back'')

Q. (Mr. Walker, continuing) When you started making these calls, what day was it?

A. The strike was on Saturday.

Q. When did you make your calls?

A. On Sunday, after the first day of the strike.

Trial Examiner Bokat: That would be on what date?

Mr. Ball: Let the record show that the strike occurred on Saturday, the 7th.

Trial Examiner Bokat: And the Sunday that you are referring to is Sunday the 8th?

The Witness: That is correct.

Q. (Mr. Walker, continuing) Did you complete all of your calls [427] on Sunday?

A. No, I couldn't get in touch with all of them on Sunday, and I had to call some on Monday.

Q. Did you do that?

A. Yes; and there were some that I couldn't get in touch with.

Q. What did you tell those people that you called over the phone? A. The same thing.

Q. I mean those that you called on Monday?

A. Yes, that is right; the same thing. I read from the list that I had on Sunday.

Trial Examiner Bokat: In other words, you told them that their job was waiting for them if they wanted to come back to work?

(Testimony of W. A. McGowan.)

The Witness: That is right.

Q. (Mr. Walker, continuing) Did you make any other contacts with any of the employees besides?

A. Besides telephoning?

Q. Yes. A. I made one call.

Q. A personal call? A. Yes.

Q. Whom did you call on?

A. That was to Mr. Robert Fullerton.

Q. And where did you call on him? [428]

A. At his home.

Q. When was that?

A. Two or three days later. It was during the week; I couldn't recall exactly the date.

Q. About what time of day did you call on him?

A. It was about eight o'clock in the evening.

Q. About how long did the call last?

A. I would say it was approximately one hour; I couldn't say for sure.

Q. Had you contacted him previously by phone?

A. No, I had not.

Q. Was he on the list?

A. No, he was not on my list.

Q. Who told you to see Mr. Fullerton?

A. Nobody, sir.

Trial Examiner Bokar: Was he on strike?

The Witness: Yes, he was out.

Mr. Ball: I am going to object to the question whether he was on strike. He may not have been there for various other reasons, sickness, or various other things.

(Testimony of W. A. McGowan.)

Trial Examiner Bokar: I am willing to modify my question. He was not there working Saturday, and he was out for a few days?

The Witness: Yes, sir.

Trial Examiner Bokar: All right. [429]

Q. (Mr. Walker) Did you bring anything out with you? A. I had one bottle of beer.

Q. Did you have a conversation with Mr. Fullerton?

A. Yes, my wife and I had a conversation with Mr. and Mrs. Fullerton.

Q. What was it?

A. Just a social conversation.

Q. Anything about the events that were taking place, or about having not been to work previously?

A. That was not brought up until later.

Q. What did you say about that?

A. I didn't say anything about it.

Mr. Ball: The respondent now objects to any further discussion of what took place on this occasion. As the testimony so far indicates, this was merely a social call between personal friends, and not at the instruction or solicitation of any responsible officer of Montgomery Ward, the respondent in this case, and it is therefore incompetent, irrelevant and immaterial, and doesn't tend to prove or disprove any issue in this case.

Trial Examiner Bokar: I will let it stand for what it is worth. I think you are making a good

(Testimony of W. A. McGowan.)

point, however, that is, so far as the social call is concerned. I don't know what effect it would have. Perhaps your objection is premature.

Mr. Ball: May we have a further objection to what may have been said at this meeting? [430]

Trial Examiner Bokar: Yes, I will give you a standing objection.

Q. (Mr. Walker, continuing) Did you tell Mr. Fullerton where you had been before you arrived at their house?

A. No, sir; I did not. So far as I know, I did not.

Trial Examiner Bokar: Is he a friend of yours?

The Witness: I consider him as such, yes, sir.

Trial Examiner Bokar: This was purely a social call, as far as you were concerned? A. Yes.

Q. (Mr. Walker, continuing) Had you called on anyone else that evening before you came to see Mr. Fullerton?

A. Not that I know of, sir.

Q. Did you call on anybody after you left Mr. Fullerton? A. No, sir.

Q. Do you know a Bill Lund? A. Who?

Q. Do you know Bill Hough?

Trial Examiner Bokar: How do you spell it?

Mr. Walker: H-o-u-g-h (spelling).

A. Yes, sir.

Q. (Mr. Walker, continuing) Do you know Bill Lund?

Trial Examiner Bokar: How do you spell that?

(Testimony of W. A. McGowan.)

Mr. Walker: L-u-n-d (spelling).

A. No, I do not. [431]

Q. (Mr. Walker, continuing) Do you know John Long?

Trial Examiner Bokat: L-o-n-g (spelling)?

Mr. Walker: Yes.

A. Yes.

Q. (Mr. Walker, continuing) Do you know a man by the name of Beede? A. Yes.

Trial Examiner Bokat: How do you spell that?

Mr. Walker: B-e-e-d-e (spelling).

Trial Examiner Bokat: You said "yes"?

The Witness: Yes.

Q. (Mr. Walker, continuing) Did you call on either of those persons? A. No.

Q. Did anybody else,—strike that. Did any of those persons call on you?

A. They contacted me. I had several persons contact me over the 'phone, wanting to see me.

Q. Did they see you?

Trial Examiner Bokat: One, was it not?

The Witness: Several.

Trial Examiner Bokat: Did they call to see you?

The Witness: Several contacted me over the telephone and wanted to see me.

Trial Examiner Bokat: Did they call to see you?

[432]

The Witness: Yes.

Trial Examiner Bokat: When you say "several", are you referring to the people mentioned by Mr.

(Testimony of W. A. McGowan.)

Walker, the Board's attorney, or are you referring to people other than those?

The Witness: Other than those.

Trial Examiner Bokat: All right.

Q. (Mr. Walker, continuing) Did anybody else that I mentioned call on you?

A. Mr. Hough.

Q. Anyone else? A. Johnny Long.

Q. Any of the others?

A. That you read off?

Q. Yes. A. No.

Q. Now, have you related everything that you said to Mr. Fullerton at his house concerning his not having been to work?

Mr. Ball: The same objection as to the previous questions.

Trial Examiner Bokat: Overruled.

The Witness: Will you repeat that, please?

Trial Examiner Bokat: Yes, will you read the question back, Mr. Nelson?

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Not in so far,—now, what is the question?

[433]

Q. (Mr. Walker, continuing) Have you related everything that you said to Mr. Fullerton at his house concerning his not having been to work?

A. In so far as his not having been to work, yes.

Q. What was that?

(Testimony of W. A. McGowan.)

A. In so far as me saying anything about him being to work, I have related everything.

Q. Did you tell him that you had been going around to some of the men in your department and talking to those whom you felt you could trust?

A. No, I made no such statement.

Q. Did you tell him that you were going around to see the men for the purpose of getting them back to work?

Mr. Ball: I want to interpose the objection that this man is called as the Board's witness, and that counsel is obviously arguing with his own witness.

Trial Examiner Bokat: Do you intend to produce witnesses to impeach this witness on the particular questions that you are now asking him?

Mr. Walker: Yes.

Mr. Ball: We object to any such a procedure as that.

Trial Examiner Bokat: Haven't you got the cart before the horse, then? I mean, I don't know your procedure in Oregon, but it seems to me that, in advance of your producing your own proof, that you should have the testimony of your own [434] witness, instead of asking Respondent's witness about it now and, if he says "no", then you calling your own witness to testify that he did have such a conversation. It seems to me,—I don't know, but if that is the procedure followed in Oregon, I will have to permit it.

(Testimony of W. A. McGowan.)

Mr. Ball: We object to any such procedure as being unfair and jeopardizing the the rights that we have to a fair trial, especially in view of the circumstances already brought out in the record.

Mr. Landye: We have what we call an adverse witness in this State whereby you can call an adverse witness before the Court ahead of time, and then he can cross examine him.

Trial Examiner Bokar: I understand that,—if you have an adverse witness, you may or can have the right to cross examine that witness and ask him leading questions, but to ask him whether or not he had certain conversations in advance of calling your own witnesses is something that I am not sure is necessarily followed by your statute.

Mr. Ball: We would also interpose this,—that this Board is not and should not be bound by any Oregon statute. There is no rule that requires the Labor Board to follow the state statutes involved.

Trial Examiner Bokar: No, I understand that. I generally do follow the local statutes in regard to certain rules that are commonly understood and followed in any particular juris- [435] diction, but——

Mr. Landye: (Interposing) Well, in a situation such as this, we do not call, under the adverse statute, we are not calling this witness with the idea that we may have to impeach him. We don't know. It may be that this witness will tell the truth as we

(Testimony of W. A. McGowan.)

see it, and it will not be necessary to do it.

Trial Examiner Bokat: "As you see it"—that is the point.

Mr. Ball: Now, let's move to strike out any question of whether or not this witness is going to tell the truth as they see it.

Trial Examiner Bokat: As they see it. I will let that stand in that way.

Mr. Ball: And it is pointed out that this is a totally unnecessary proceeding, because the Board, if it has any witnesses as to what Mr. McGowan said, can produce those in the ordinary presentation of its case, thus giving the respondent the opportunity to investigate into the truth of the charges thus indicated.

Trial Examiner Bokat: I am afraid I will have to insist, Mr. Walker, that you put on your witnesses in the ordinary course, and have them testify and let the respondent call its own witness and either admit or deny what took place. I think I would prefer it that way.

Mr. Walker: That is agreeable to me. I only called this witness in the hope that,— [436]

Trial Examiner Bokat: (Interposing) —it might save some time?

Mr. Walker: (Continuing) Obviate the necessity of calling six or seven other witnesses, and take that much more time.

Trial Examiner Bokat: Evidently you will have to call them, anyway, according to the nature of the answers already given. I am going to sustain

(Testimony of W. A. McGowan.)

the respondent's objection to this method of procedure, and ask you to establish any conversations *an* already established by the Board's witnesses, and put on your own witnesses to that effect.

Mr. Walker: Very well.

Trial Examiner Bokat: Do you have any further questions of this witness at this time?

Mr. Ball: You understand that we are not making an objection to the examination of this man?

Trial Examiner Bokat: Oh, I understand.

Mr. Ball: But it is to the results that they intend to produce by it. They can proceed with their examination of Mr. McGowan as far as the respondent is concerned.

Trial Examiner Bokat: I understand.

Mr. Walker: May we have a recess, then, while I contact these other witnesses?

Trial Examiner Bokat: Yes, yes.

Before you do that, I assume that you don't wish to question the witness at this time. Do you want to reserve the right to [437] coordinate it?

Mr. Ball: I would like to cross examine up to the point that the examination on direct has gone at this point.

Trial Examiner Bokat: Are you ready to proceed on that?

Mr. Ball: Yes.

Cross Examination

Q. (Mr. Ball) Mr. McGowan, have you ever had

(Testimony of W. A. McGowan.)

any conversation with me on any matter pertaining to the charges before this court? A. No, sir.

Q. What acquaintance have you with me?

A. I met you the first time yesterday morning.

Mr. Ball: Will you mark this, please?

(Whereupon the document hereinabove referred to was marked for identification as Respondent's Exhibit 7.)

Q. (Mr. Ball, continuing) I hand you what the reporter has marked Respondent's No. 7, and ask you if you recognize what it is?

A. This is the——

Mr. Walker: (Interposing) Just a moment. May I request that the witness be instructed to answer that question "yes" or "no"?

A. Yes.

Q. (Mr. Ball, continuing) All right, what is it?

A. This—— [438]

Mr. Walker: (Interposing) Just a moment. Doesn't the document speak for itself?

Trial Examiner Bokar: Well, he is just trying to identify it now. You can look at it, if you want to.

Mr. Reporter, will you read the question?

(Whereupon the question referred to was read as follows:

"Q. (Mr. Ball) All right, what is it?")

A. This is the slip that was handed to me to make the telephone calls from, Sunday morning of the 8th.

(Testimony of W. A. McGowan.)

Q. (Mr. Ball, continuing) Who gave you that slip?
A. Mr. Robinson.

Q. What did he say to you about that slip?

A. He told me that I was to follow the slip out to the letter, and under no circumstances was I to put any of my own personal talk or anything else into it.

Q. And did you follow that in your conversations with the telephone calls and calls you made on company instructions?
A. I did.

Q. Did you follow that in any other contacts you may have had with the employees?

A. I did.

Mr. Ball: I now offer Respondent's Exhibit No. 7 into evidence in connection with the cross examination of Board's witness McGowan.

Trial Examiner Bokat: Is there any objection?

[439]

Mr. Walker: No objection.

Trial Examiner Bokat: There being no objection, it may be received and marked in evidence.

(Whereupon the document heretofore marked Respondent's Exhibit No. 7 for identification was received in evidence.)

(Testimony of W. A. McGowan.)

RESPONDENT'S EXHIBIT No. 7
TRANSCRIPT OF TELEPHONE CONVERSA-
TION TO EMPLOYEES

"Good evening Miss, Mrs. or Mr.....

This is Mr. speaking.

Since you were not at work today I wanted to let you know that we are operating tomorrow as usual and your job is open for you if you want to come in."

(When you have made the above statement, listen for the employee's reaction to it. Do not make any further statement unless the employee asks some question. It is not possible to set out all the possible questions which you may be asked, but in answering the questions you should confine yourself to a repetition of the thought contained in the quotation above. When questions are asked, you may answer them frankly, but above all, do not in any way insist that the employee should come to work or intimate that their jobs will be in danger. The main purpose of this call is to notify the employee that the plant is operating and his job is waiting for him if he wants to come on.)

Mr. Landye: I have a question on redirect in regard to the exhibit. May I ask that now?

Trial Examiner Bokst: Yes, you may.

(Testimony of W. A. McGowan.)

Redirect Examination

Q. (Mr. Landye) Showing you respondent's exhibit 7, Mr. McGowan,—has that slip been in your possession all of the time since the first part of September, in your personal possession?

A. No.

Q. Were you given one that you kept yourself?

A. I was given one that I turned in to Mr. Robinson.

Q. Did you turn that back?

A. I turned that back after the telephone calls were made.

Q. You don't know, then, whether that is the slip that you have there that you actually called from then? A. I can't swear to that, no.

Mr. Ball: I want to make it clear that I don't mean that this is the exact slip. I have no means of identifying it.

Mr. Landye: I would like to find out what it is.
[440]

Trial Examiner Bokar: Go ahead. No one is preventing you from cross examining to find out if there are other slips.

Q. (Mr. Landye, continuing) You can't tell whether that is the actual slip that you called from or not, can you?

A. That is, on this slip of paper, no.

Q. I see. And how long,—the slip that was given to you, did you turn it back at the end of each day?

A. No; I turned that back on Monday night.

(Testimony of W. A. McGowan.)

Q. You kept it from Saturday to Monday?

A. I kept it from Sunday morning to Monday night.

Q. You started calling Sunday morning?

A. That is right.

Q. From the plant,—I mean from the store?

A. That is right.

Q. I see. Were you given any other slips?

A. No, just the list of telephone numbers was all.

Q. Did anyone else have any conversations with you besides Mr. Robinson as to what you should call about on the phone?

A. No, sir; Mr. Robinson gave me my orders direct.

Q. Did you call up everybody on the floor during the——

A. (Interposing) No, I couldn't possibly have done that, and there was some on my slip that I couldn't get in contact with.

Mr. Landye: At this time, I will have to make a motion to strike the Exhibit upon the grounds that it hasn't been properly identified. [441]

Trial Examiner Bokat: May I see it?

Q. (Trial Examiner Bokat) To the best of your recollection, is Board's Exhibit 7,—Respondent's Exhibit 7, identical with the instructions that were given to you by Mr. Robinson?

Will you look at it carefully and then answer that question, whether it is or not? A. Yes.

(Testimony of W. A. McGowan.)

Trial Examiner Bokat: I will have to overrule the objection.

Mr. Landye: Exception.

Q. (Mr. Landye, continuing) Who told you to report down to the store on Monday morning?

A. Who told me to?

Q. Yes. A. Mr. Robinson.

Q. Mr. Robinson? A. Yes, sir.

Q. Do you usually work on Sunday?

A. No, not usually.

Q. Well, how many times did you work on Sunday in the past year before this?

A. Well, that is very hard to bring out.

Q. Two or three, or five, or fifteen?

A. It is according to the seasons of the year. In some cases, we will work maybe one Sunday out of three months and then around Christmas time we may work three Sundays or four Sundays.

Q. Did you do any work on Sunday besides calling up these [442] various people?

A. Yes, plenty.

Q. I see. Now, when Mr. Robinson gave you Respondent's Exhibit 7, did he just hand you the slip?

A. No. He handed me this slip and another slip with the names of the people on it.

Q. Yes.

A. And the telephone numbers.

Q. He handed you one slip, Respondent's Exhibit 7? A. That is right.

(Testimony of W. A. McGowan.)

Q. And then another slip with phone numbers on it? A. That is right.

Trial Examiner Bokat: Names and telephone numbers?

The Witness: That is right.

Q. (Mr. Landye) Names and telephone numbers? A. That is right.

Q. Did he say anything else?

A. Yes; he told us that we were to contact these people by phone, and that we were to follow out these instructions as to how to telephone to them, to the letter.

Q. (Trial Examiner Bokat) You say "he told us"?

A. Well, in other words, other people than myself were at that meeting and called on to do the telephoning.

Q. Who were the other people?

A. They were some more of the operating superintendents. [443]

Q. And they received slips similar to the ones that you received?

A. Similar to the ones that I received.

Q. And instructions similar to yours at the same time? A. That is right.

Q. (Mr. Landye) This was at a meeting that was called of the Supervisors?

A. They called a meeting of the supervisors at Mr. Robinson's office.

Q. How long did that last?

(Testimony of W. A. McGowan.)

A. Very short.

Q. About how long?

A. Five or ten minutes.

Q. And in ten minutes, that is the only thing that you were told?

A. That is the only thing we were told; five or ten minutes, I say.

Q. And in five minutes, all you were handed was two papers and told to follow that out to the letter?

A. That is right.

Q. And that is all that you were told by Mr. Robinson?

A. That is all Mr. Robinson told me.

Mr. Landye: I see. That is all.

Trial Examiner Bokar: Anything else, Mr. Ball?

Mr. Ball: I think not. [444]

Trial Examiner Bokar: Do you have any questions, Mr. Walker?

Mr. Walker: Yes.

Redirect Examination

Q. (Mr. Walker) Had you ever been to Mr. Fullerton's house prior to the time you and your wife went out there? A. Several times.

Q. How often?

A. Three or four times?

Q. Three or four times? A. Yes, sir.

Q. In the course of a year, do you mean?

A. In the course of a year.

(Testimony of W. A. McGowan.)

Recross Examination

Q. (Mr. Ball) Have you ever drunk any beer with Mr. Fullerton before? A. Plenty.

Mr. Ball: That is all.

(Witness excused)

Trial Examiner Bokat: We will suspend for ten minutes at this time.

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

[445]

(Whereupon at 4:40 p. m., pursuant to afternoon recess, the following proceedings were had:)

Trial Examiner Bokat: The hearing is now in session.

WILLIAM EARLE HOUGH,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Bokat: Give your full time and address to the reporter.

The Witness: William Earle Hough, 6825 Northeast Stanton.

Q. (Mr. Walker) Have you ever been employed at Montgomery Ward, Mr. Hough? A. Yes.

(Testimony of William Earle Hough.)

Q. How long had you worked there?

A. About two years.

Q. When did your employment last end there?

A. December 7th.

Mr. Ball: Will you speak a little louder, if you please?

The Witness: December 7th.

Q. (Mr. Walker continuing) During the time you worked there, who was your supervisor?

A. W. A. McGowan.

Q. After December 7th, did you see Mr. McGowan at any time? A. Yes.

Q. When? [446]

A. Just about four days after the strike.

Q. Where did you see him?

A. I saw him at his home.

Q. About what time of night was that?

A. About 7:30 or 8 o'clock in the evening.

Q. How did you happen to go to his house that night?

A. Well, he was out to my house,—I didn't happen to be home, but my mother was there; she said he was there and he would like to see me; so I went out to his house and saw him.

Q. When had Mr. McGowan been to your house, with respect to the day you went to his house?

Mr. Ball: I move to strike out of the record what his mother told him about Mr. McGowan's coming, as being hearsay.

(Testimony of William Earle Hough.)

Trial Examiner Bokat: Well, I will merely accept it to show the reason why the witness went to the home of Mr. McGowan. If, as a matter of fact, his mother said that Mr. McGowan had been there, and that he, therefore, went to Mr. McGowan's home, I will merely accept it to show a course of conduct; how he happened to go to Mr. McGowan's house. I don't say it is necessarily binding on the respondent, or proves that Mr. McGowan actually went there. I hope my explanation is clear.

Q. (Mr. Walker continuing) When had Mr. McGowan been to your house, Mr. Hough?

A. I don't remember the exact date; I think it was about [447] three days after the strike.

Mr. Ball: The same objection there; and that it assumes a fact not proven.

Trial Examiner Bokat: When did you receive the message he had been to your house? The day before you went to visit him, the same day, or what?

The Witness: About two or three days after he come to my house I went up to see him.

Trial Examiner Bokat: Two or three days after you received the message and you learned he had been to your house, you went to Mr. McGowan's house?

The Witness: That is right.

Mr. Ball: Of course, for the answer, to the extent the witness said it was after Mr. McGowan came to his house, I move to strike that part as a conclusion of the witness.

(Testimony of William Earle Hough.)

Trial Examiner Bokat: I am referring to the message he received that he had been there.

Q. (Mr. Walker continuing) Now, when you got to Mr. McGowan's house, did you have a talk with him? A. Yes.

Q. What was said?

Mr. Ball: Now, just a minute. At this time, respondent objects to any testimony as to any conversation between this witness and Mr. McGowan, because it appears that it took place under circumstances that were not such as to make the [448] actions or words of Mr. McGowan binding on this respondent; that it is, further, an attempt to impeach statements which were elicited on examination of Mr. McGowan.

Trial Examiner Bokat: I will overrule the objection. You may answer the question.

A. Well, we started out by asking if I wanted to come back?

Mr. Ball: I can't hear you, Mr. Hough.

The Witness: He said if I wanted to come back to work that I didn't have to really go through the picket line. I could come around through the back way of the store. He said some of the boys were coming back. He said he hated to see me out; he would like to see me back. He said he didn't want to see me lose money. We didn't talk all the time about the strike; we started a conversation on other things. But the most important thing was,—I went

(Testimony of William Earle Hough.)

out there to see him about,—was to see whether I should go back to work.

Mr. Ball: I move to strike out those portions of the witness' answer which are his opinions and conclusions as to his reasons for going and the tenor of the conversation. I move to strike out the entire answer as an opinion and conclusion. I move to strike out the answer for the reasons urged in the question eliciting this conversation.

Trial Examiner Bokat: Deny the motion, with certain modifications. After the reporter reads the answer back to me, I will indicate which part I will strike and which I will permit [449] to stand. Read it back to me, please.

(Whereupon the answer referred to was read aloud by the reporter as above recorded.)

Trial Examiner Bokat: From "the most important thing" on, strike that.

Mr. Ball: Let the record show that we add to the objection the further objection that this conversation doesn't tend to prove or disprove any of the issues in this case.

Trial Examiner Bokat: You may be right,—very technically and strictly speaking,—because of the allegations of the complaint. I am referring particularly to the fact that there is no specific allegation of a nature to support testimony of this witness; that is true. All that we have is the phrase, "and by various other acts", that would indicate there might have been other acts of interference, re-

(Testimony of William Earle Hough.)

straint, or coercion,—if this can be considered as such. In view of the fact Board's counsel indicated at the beginning of the hearing that he intended to produce such proof, and inasmuch as I asked Board's counsel to supply certain information to respondent's counsel, I will deny the motion to strike on the ground just stated by Mr. Ball.

Q. (Mr. Walker continuing) Was there any discussion about the strike being in existence?

Mr. Ball: Now, just a minute. I object to the rather leading form of this question here. He is more or less putting [450] the words of the answer in the mouth of the witness. In view of the circumstances, I think you should instruct counsel against leading the witness.

Trial Examiner Bokat: Read the question back.

(Whereupon the last question was read aloud by the reporter as above recorded.)

Trial Examiner Bokat: I will overrule the objection on that.

Mr. Walker: You may answer, Mr. Hough.

The Witness: What was the question again, please?

Trial Examiner Bokat: Read it back.

(Whereupon the question just read was again read aloud by the reporter as above recorded.)

A. Yes, there was.

Q. (Mr. Walker continuing) What was said about that?

Mr. Ball: The same objection,—or the objection,

(Testimony of William Earle Hough.)

rather, that this is a question following a leading question.

Trial Examiner Bokar: Overruled.

The Witness: He said that the store would never go union; that they would lock the store up and send all the books and everything to the Chicago house before they would sign a union contract.

Mr. Ball: I move to strike this out for all the reasons urged previously; the testimony of this witness as to what took place at this conversation.

[451]

Trial Examiner Bokar: Motion denied.

Q. (Mr. Walker continuing) Was there any conversation about Mr. McGowan's connection with the company?

A. Yes. He said that he had a contract with Montgomery Ward & Company, and that if the store closed up he would not be out of a job, because he would still be getting his salary all the time; it didn't make any difference to him whether it went union or not.

Trial Examiner Bogat: It didn't make any difference, what?

The Witness: It didn't make any difference whether they closed up the store or not.

Mr. Ball: I move to strike the answer out, and insert before the answer and after the question the same objections that have been urged.

Trial Examiner Bogat: Objection overruled and motion denied.

(Testimony of William Earle Hough.)

Q. (Mr. Walker continuing) Was there any discussion of any other Montgomery Ward store?

A. Yes.

Mr. Ball: Now, I object consistently here to the leading of this witness by counsel. Why doesn't he ask the witness what was said, and let the witness supply the details, without putting them in his mouth.

Trial Examiner Bokar: I think the question, in the form it was stated, is proper. But, as to the subject matter, I may have some doubts as to its validity. What would other stores [452] of Montgomery Ward have to do with this particular store? I don't see the connection.

Mr. Walker: It is just a general course of conversation relating to the conduct of the company, and also it indicates the extent of the strike affecting other stores.

Mr. Ball: Let me state for the record here, that when Mr. Walker told me what he had in mind to prove as these other acts, it was simply certain conversation urging these people to go back to work. He didn't amplify that it related to any more subject matter than that.

Mr. Walker: That is correct. I told you I didn't do it, because it would be considered evidentiary.

Trial Examiner Bokar: Let me hear the question again.

(Whereupon the question referred to was read aloud by the reporter as above recorded.)

(Testimony of William Earle Hough.)

Trial Examiner Bokat: I will overrule the objection at this time, subject to a later motion to strike, as to the last question.

Q. (Mr. Walker continuing) Have you the question now? A. Yes.

Trial Examiner Bokat: He has already answered. He said, Yes.

Q. (Mr. Walker continuing) What was it?

A. Well,—

Mr. Ball: (Interrupting) Objection; that this doesn't [453] tend to prove or disprove any of the issues in this case.

Trial Examiner Bokat: Subject to some connection with the issues.

The Witness: We started talking about the Spokane house. He asked me if they had pickets around Spokane house, and I said I didn't know. He said, "Well, I don't think there are. If I was you fellows, I would all chip in and buy a tank of gas and drive up there and see if there is any pickets around the Spokane house. I don't think there are." That is all that was said.

Trial Examiner Bokat: I will grant the motion to strike, considering there was a standing motion to strike. In other words, I agree with counsel that the last answer of the witness would not tend to prove or disprove any of the issues of the complaint.

Mr. Walker: Well, except for this, Mr. Examiner: If the Spokane store was struck, and if there

(Testimony of William Earle Hough.)

were pickets around there, or if there were not,—in either event, the inducing or urging of persons on strike to go to observe the conduct or lack of strike conduct, at another store, is offered for the purpose of discouraging union activity, breaking the strike, or bringing about a back-to-work movement, and urging employees to abandon unions and to go through picket lines.

Trial Examiner Bokar: I don't want to expand the issues in this case more than absolutely necessary. I will stick to my [454] original ruling. Merely strike, to make the record clear, the last answer given by the witness.

Q. (Mr. Walker continuing) Do you know a Mr. Beede? A. Yes, I do.

Q. Was there any further conversation with Mr. McGowan that evening?

Mr. Ball: The same objection.

Trial Examiner Bokar: Overruled.

The Witness: Yes. He told us about Beede and Jack Walker,—those are the two boys working on our floor,—coming back to work. He said they were coming around through the back entrance of the door. They didn't have to go through by the picket line. And before I left, he said he would like to have me get hold of as many fellows as I could and talk to them and tell them they could come in the back door and they would not have to go through the picket line.

Mr. Ball: I move to strike, for the same reasons.

(Testimony of William Earle Hough.)

Trial Examiner Bokat: Motion denied.

Q. (Mr. Walker continuing) How did that conversation that evening, between yourself and Mr. McGowan, end?

A. He asked me, he says he would like to see me come back, but I didn't give him an answer whether I would or would not come back the next day. That is all there was to it.

Mr. Walker: That is all.

Trial Examiner Bokat: Cross examine, Mr. Ball.

[455]

Cross Examination

Q. (Mr. Ball) Who suggested that you testify to this effect at this trial?

Mr. Walker: Now, just a minute. I object to that.

Trial Examiner Bokat: Yes. Objection sustained as to form. Reframe the question.

Q. (Mr. Ball) Who did you first talk to about your conversation with Mr. McGowan?

A. Who did I first talk to?

Q. Yes. A. Mr. Walker.

Q. How did Mr. Walker happen to talk to you about this? Did you come to him, or did he come to you, or what?

A. I didn't come to him, no.

Q. How did it happen that you talked to Mr. Walker about this?

A. One of our strikers told me to come up and see Mr. Walker.

(Testimony of William Earle Hough.)

Q. Who was this? A. Mr. Malloy.

Q. You talked to him about this before?

A. Yes, I did.

Q. Had he come to you and asked you about it?

A. Yes.

Q. He had come and asked you if you had any tale to tell of this character?

A. He didn't ask me, no. [456]

Q. What did he say then?

A. He asked me to come up to Walker's office.

Q. How did you ever bring this subject up?

A. It must have slipped out some way.

Q. Isn't it a fact, somebody came around and asked you if you couldn't tell just such a tale as this?

Mr. Walker: I object to that.

Trial Examiner Bokat: Overruled.

The Witness: What was the question again?

Trial Examiner Bokat: Read the question.

(Whereupon the last question was read aloud by the reporter as above recorded.)

A. No, he didn't ask me that way; no.

Q. What did he say to you then?

A. I done it on my own ability.

Q. The question is, Didn't somebody come and ask you if any such incident as this had happened to you?

A. He asked me to come up to the office and speak to Mr. Walker.

(Testimony of William Earle Hough.)

Q. When was the first time you had a conversation with anybody about the conversation with Mr. McGowan?

Mr. Walker: Object to that. It is a compound question.

Trial Examiner Bokat: Break it up.

Q. (Mr. Ball continuing) Who was the first person you talked to about the conversation with Mr. McGowan? [457] A. Mr. Malloy.

Q. When was that?

A. About a month, or something like that, ago.

Q. About a month ago? A. Yes.

Q. More than three months after this happened then? A. Something like that, yes.

Q. How did you happen to talk about it with Mr. Malloy.

A. I happened to be telling him about it; that's all.

Trial Examiner Bokat: Did you voluntarily tell him what happened, or did he ask you?

A. The Witness: I voluntarily told him what happened.

Trial Examiner Bokat: You mean you told him what you have already testified to here?

The Witness: Yes.

Q. (Mr. Ball continuing) In what kind of a place did this conversation with Mr. Malloy take place? A. Down on the picket line.

Q. How did the subject come up?

(Testimony of William Earle Hough.)

A. Well, I just happened to start it.

Q. Who is Mr. Malloy?

A. He is a picket captain.

Q. Isn't it a fact that Mr. Malloy went, at that time, to a number of you and asked you if you could testify to something of this kind? [458]

A. No; he didn't ask us that.

Q. He suggested that he was interested in such matters?

Mr. Landye: That question has already been asked and answered. I object to it.

Trial Examiner Bokat: Well, I will let it stand. It is cross examination.

The Witness: We done it of our own ability.

Q. (Mr. Ball continuing) Answer the question.

Trial Examiner Bokat: Read the question, please.

(Whereupon the question was read aloud by the reporter as above recorded.)

Q. (Mr. Ball continuing) Did he?

A. Did he what?

Q. Suggest that he would be interested in hearing such tales from you?

A. I imagine he would, yes.

Q. Did he suggest to you that he would?

A. No.

Q. Isn't it a fact that there had been literature circulated by the strike committee of the union asking for the production of these stories?

A. Well, it is hard to answer that. I told you

(Testimony of William Earle Hough.)

before, I went and told him on my own ability; to help out.

Q. To help out. How did you know they wanted that; that that would help out? 459]

A. He was wrong in doing that.

Q. How did you think he would be interested in that? What made you think that?

A. Well,—

Q. (Interrupting) Look me in the eye and tell me the answer to that question.

Mr. Walker: Just a minute now.

Trial Examiner Bokat: (Rapping for order among the spectators) Quiet, please.

Mr. Landye: For a few minutes here he has been asking back and forth the same questions, and most of them he asked were answered. Now, he is merely more or less trying to bully the witness. I think we should have a little order here.

Trial Examiner Bokat: I will see that every witness on the witness stand here is protected and given an opportunity to answer the question.

I do think you have asked two or three questions before. Let him have the first one; let him have them one at a time.

Q. (Mr. Ball continuing) When did you first learn that charges of unfair labor practice had been filed against the company?

A. When did I learn?

Q. Yes. A. When we were out on strike.

(Testimony of William Earle Hough.)

Mr. Ball: Let the record show that the witness has been sitting here with a smile on his face. [460]

Mr. Walker: Well, now, just a minute. Let the record also show that counsel has been shaking his finger in the witness' face and shouting at him.

Trial Examiner Bokar: I don't know if there is any objection to the witness smiling. I want the record to fairly reflect what is taking place.

Mr. Ball: Now, will you read the last question?

(Whereupon the last question was read aloud by the reporter as above recorded.)

Q. (Mr. Ball continuing) When was the first time?

A. Well, it was when we went out; about two or three weeks after the strike.

Trial Examiner Bokar: I don't believe the witness understands the question.

You know what is meant by charges of unfair labor practice being filed with the National Labor Relations Board?

The Witness: I think I do, yes.

Trial Examiner Bokar: Did you know when those were filed, or why?

The Witness: No.

Trial Examiner Bokar: Do you know?

The Witness: No, I don't.

Trial Examiner Bokar: All right.

Q. (Mr. Ball continuing) Now, how many times have you been to Mr. McGowan's house? [461]

A. Once.

(Testimony of William Earle Hough.)

Q. You only came out to his house once?

A. That is right.

Q. You didn't come out a second time?

A. No.

Q. When was it that you first got the idea that this conversation with Mr. McGowan might have some significance in a charge against this company?

A. Well, when I left Mr. McGowan's house, he kind of mentioned it to me to keep it under my hat; not to say anything about it.

Mr. Ball: I move to strike out the answer as not responsive; and I move to instruct the witness to answer when it was that he first learned that such a story, told to somebody else, might have some significance in charges brought against this company.

Mr. Landye: It may very well be in the witness' mind, as he indicated, when Mr. McGowan told him to keep it under his hat,—that is when he suspected it was wrong.

Trial Examiner Bokat: I will let it stand as a partial answer; but I will have the original question put back to the witness.

(Whereupon the last question was read aloud by the reporter as above recorded.)

Trial Examiner Bokat: If you ever did have that idea, that it would have any significance. [462]

The Witness:: No, I didn't.

Mr. Ball: I didn't hear the answer.

The Witness: No.

(Testimony of William Earle Hough.)

Trial Examiner Bokat: I think the witness is obviously confused. Please read the question again.

(Whereupon the question previously read was read again aloud by the reporter as above recorded.)

Trial Examiner Bokat: And I have added, of my own accord, to that question,—If you ever did have such an idea.

The Witness: Well, I don't think there is anything wrong in going out to see him; but him coming out to my house to see me and asking me to come back to work,——

Trial Examiner Bokat: Obviously the witness does not understand the question. You will have to develop it.

Mr. Ball: I move to strike the answer as not responsive.

Trial Examiner Bokat: Yes. [463]

Q. (Mr. Ball, continuing) How many days have you been on the picket line?

A. How many days have I been on the picket line?

Q. Yes.

A. Well, up until about two weeks ago, I have been on the picket line about every day.

Q. How long has Mr. Malloy been your picket captain? Has he been your picket captain all the time?

(Testimony of William Earle Hough.)

A. Ever since the strike began, up to two weeks ago.

Q. You had seen Mr. Malloy practically every day since this strike had started, or since the strike has taken place?

A. That is right.

Q. What did Mr. Malloy say to you when he told you about this incident?

Mr. Walker: Just a minute, I will object to that.

Trial Examiner Bokst: Overruled.

A. I can't remember what the exact words were, just like any conversation at all; he didn't say anything important.

Q. (Mr. Ball, continuing) Did he tell you to come to see Mr. Walker at that time?

A. Not at that time, no.

Q. When did he tell you to see Mr. Walker?

A. About two days ago.

Q. Did he make some notation at the time that he first told you this, from some paper of some kind? [464]

A. Who?

Q. Mr. Malloy?

A. Two days ago when he asked me?

Q. The first time when you told him this story?

A. No, he did not.

Q. When was it that he asked you to come to see Mr. Walker?

A. Oh, about two days ago.

Q. What was the reason that he wanted you to see Mr. Walker? What was the reason that he gave?

(Testimony of William Earle Hough.)

A. He wanted me to tell the conversation that I had with Mr. McGowan.

Q. What were your exact duties at Montgomery Ward? A. Examiner.

Q. In what departments?

A. Fifth floor, divisions 68 and 85.

Q. Are you on any of these strike committees? Or are you a member of a union organization in an active way? A. No.

Q. You have been on the picket line every day?

A. Yes.

Q. Now, how long did that conversation with Mr. McGowan take? A. How long did it take?

Q. Yes. A. When I was out to his house?

Q. Yes. [465]

A. Until about three o'clock in the morning.

Q. From what time?

A. From about seven.

Q. From seven o'clock in the evening until three o'clock in the morning? A. Yes, sir.

Q. What were the other subjects that you talked about?

A. I can't remember all what it was.

Q. You don't remember,—you can't remember what you were talking about from seven o'clock in the evening until three o'clock in the morning?

A. It wasn't very important; the war and things like that.

Q. Can you tell me about anything else you talked about?

(Testimony of William Earle Hough.)

A. About some of the businesses, other stores, about his job, how long he had been with the company, and so on.

Q. You are now repeating more or less what you testified about on direct examination?

A. I know that we talked about the strike and other things.

Q. You can remember exactly the things you testified to, although you can't remember anything else that you talked about over these several hours?

A. I told you.

Q. That is right, is it? A. Yes.

Q. Was there any other person present at Mr. McGowan's house [466] while you were there?

A. Yes.

Q. Who? A. Johnny Long.

Q. Who else? A. Mrs. McGowan.

Q. Who else? A. Mrs. Long.

Q. Who else? A. That is all.

Q. What did you do during that time? Did you eat something or drink something?

A. Yes, we had a few drinks.

Trial Examiner Bokar: Were the other people there as long as you were there?

The Witness: Yes. We all left at the same time.

Q. (Mr. Ball, continuing) And any conversation that you had in Mr. McGowan's house would have been in the presence of these other people?

A. Well, I arrived first, and Mr. McGowan first talked to me about the first conversation; that is, the

(Testimony of William Earle Hough.)

first conversation was about the strike, and then Mr. Long arrived while we were talking there, about 10 or 15 minutes later.

Trial Examiner Bokar: What you said, was that said in the presence of Mr. Long, or did it happen after Mr. Long came, or [467] before?

The Witness: No. We started all over again when he came.

Q. (Mr. Ball, continuing) Mrs. Long was there?

A. Yes.

Q. And Mrs. McGowan was there, too?

A. Yes.

Q. Now, you had been on the picket line before you had gone to Mr. McGowan's house that evening?

A. That is right.

Q. Were there pickets on all sides of the house at that time?

A. On all sides of the house?

Q. Yes.

A. What do you mean by that?

Q. Doesn't the picket line supposedly run around the entire establishment?

A. It runs around the front of the building.

Q. When Mr. McGowan said that you could come in the back way and you wouldn't be going through the picket line, what did you say?

A. I told him I would think it over. I didn't give him any definite answer. I told him that I would think it over.

(Testimony of William Earle Hough.)

Trial Examiner Bokat: Was there actually a picket line at the back entrance?

The Witness: No, but you had to go through the picket line in order to get to the back entrance.

[468]

Q. (Mr. Ball, continuing) So you had to go through the picket line to get to the back entrance?

A. Yes.

Q. You knew that at the time that he told you this?

A. Yes.

Q. And you didn't say anything to Mr. McGowan when he suggested that you could go in through the back entrance?

A. Well, there is also another way. You can crawl around the hill and go around that way.

Q. But Mr. McGowan wasn't suggesting that to you?

A. No, he wasn't suggesting that to me.

Q. What else did you say to Mr. McGowan in the course of the conversation?

A. I told him that I would think it over. I didn't know whether I would go back or not.

Q. What else did you say to Mr. McGowan?

A. That is about all I did say.

Q. In the course of the evening, what did you say to Mr. McGowan?

A. I can't quite remember the exact words I told him.

Q. You can remember everything that he told you, as you testified, but you can't remember anything that you said to him?

(Testimony of William Earle Hough.)

A. Well, I told him that I would think it over, and that is all I said. [469]

Q. Do you remember any other thing that you said in the course of the conversation?

A. We talked about the business up there, how he got to be a supervisor, how long he had been on the force, or at the store, rather, and so on.

Q. When he said something about this contract that he had, what did you say to him?

A. I didn't say anything. I just let it go at that.

Q. When he suggested that you go to Spokane, what did you say?

A. I didn't say anything.

Q. You just sat there and said nothing?

A. That is right.

Q. Or is it that you don't remember what you said?

A. I can't remember all what was said.

Q. You don't remember anything that you said in the conversation at all? A. No.

Q. But you do remember everything that he said?

A. Yes, just about everything; not quite.

Q. Did you make any comments regarding what he stated at that time? A. No, I didn't.

Q. And you didn't talk it over with anyone until you told Mr. Malloy? [470]

A. That is right.

Q. Three months later?

(Testimony of William Earle Hough.)

A. That is about right. Three months later.

Mr. Ball: That is all.

Trial Examiner Bokat: Any redirect?

Redirect Examination

Q. (Mr. Walker) Just one thing, Mr. Hough. You started to say something about when Mr. Long came in, that Mr. McGowan started all over again, and at that point, counsel interrupted you and asked you if Mrs. McGowan was there. What were you going to say that Mr. McGowan said when Mr. Long came? A. What was I going to say?

Q. Yes. A. When Mr. Long came in?

Q. On cross examination, in describing what took place at Mr. McGowan's house, you stated that you arrived there first and then about 10 or 15 minutes later, Mr. Long came in.

A. That is right.

Q. And that when Mr. Long came in, Mr. McGowan started all over again? A. Yes.

Q. I took it that you were going to add something more to your answer when Mr. Ball asked you another question. Did you have anything further to add? A. No, I did not. [471]

Trial Examiner Bokat: The witness is excused. You may step down, please.

(Witness excused)

Mr. Walker: I will call Helen Blackburn.

Mr. Ball: At this time, the Respondent moves to strike the testimony of the witness Hough for the reason that it took place, apparently, during a social call, and there is no showing that there was any authority on the part of Mr. McGowan to make any statements ascribed to him, and, in any event, such statements would not be binding upon this respondent; and, on the further ground, that the testimony of this witness does not tend to prove or disprove any issues in this case.

Trial Examiner Bokat: The motion is denied.

HELEN BLACKBURN

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give your name and address to the reporter.

The Witness: Helen Blackburn.

Trial Examiner Bokat: How do you spell your name?

The Witness: B-l-a-c-k-b-u-r-n (spelling).

Direct Examination

Q. (Mr. Walker) Where do you reside?

A. 2636 Southeast Pine.

Q. Portland, Oregon? [472]

A. Portland.

Q. Is it Miss Blackburn, or Mrs. Blackburn?

(Testimony of Helen Blackburn.)

A. Mrs. Blackburn.

Q. Have you been employed at the Montgomery Ward store? A. I have.

Q. Here in Portland? A. I have.

Q. When did you last work there?

A. December 6.

Q. How long had you worked for Montgomery Ward up to that time?

A. Well, it would be five years last March if I had stayed until that time.

Q. In December, 1940, what kind of work were you doing?

A. I was doing "Preferred Attention Orders"; that is, checking and packing.

Q. Who was your supervisor?

A. Mr. McGowan.

Q. Did you work Saturday, December 7?

A. I did not.

Q. Have you received any calls, or have you had any communications, or have you had any conversations with Mr. McGowan since December 6, 1940?

A. I called Mr. McGowan on Saturday night of the strike.

Q. How did you happen to do that?

A. I wanted to talk to him personally myself and tell him why [473] I was not working.

Q. Was that the first call that you had?

A. I had a call from the company before that telling me that the store would be open for operations on Monday morning.

(Testimony of Helen Blackburn.)

Q. When did you get the call?

A. The exact time,, I couldn't say; it was in the evening, though; it must have been between five and six o'clock.

Trial Examiner Bokat: When?

The Witness: Saturday evening.

Q. (Mr. Walker, continuing) December 7?

A. Yes, sir.

Q. When did you call Mr. McGowan?

A. I called him first and his wife told me that he was not home, and I asked her if he was still at the store, and she said that she thought he was.

Q. What did you do then?

A. I called the store.

Q. Did you get him? A. Yes.

Q. Who answered the telephone when you called the store?

A. The girl on the switchboard answered.

Q. What happened next?

A. I asked for our local, and Allen Murphy answered the phone, and I asked for Mr. McGowan. Then Mr. McGowan took the phone.

Q. What took place then? [474]

A. I told Mr. McGowan why I was not there, and he told me that I didn't have to go through the picket line, that I could go through the back way.

Mr. Ball: I will object to that as being too indefinite. It appears that she called on Mr. McGowan, which was purely a personal call, for personal reasons, and certainly there is nothing in that to indi-

(Testimony of Helen Blackburn.)

cate that there is any authority on the part of anyone to bind the respondent.

Furthermore, I object to the testimony as a summary, and a conclusion, stating why she was not there.

Trial Examiner Bokat: Well, I will let the answer stand. If you want the witness to specifically state what she told Mr. McGowan, she can do that.

Q. (Mr. Walker, continuing) What did you say to Mr. McGowan before you said this about not being there, and before he said that you didn't have to go through the picket line?

A. I told him why I had not been there; that is the first thing I told him.

Q. All right, what did he say?

A. He said that I didn't have to go through the picket line. First, I told him that I was not going to go through the picket line for my job. Then he told me that I didn't have to go through the picket line, that I could go through the back way. I asked him what he meant, and he said there was a door to the back entrance that I could come in.

Mr. Ball: The same objection to this testimony.

[475]

Trial Examiner Bokat: Same ruling.

Q. (Mr. Walker, continuing) Did you say anything?

A. I told him that I would see.

Q. Was there anything further?

(Testimony of Helen Blackburn.)

A. He said for me to tell the kids that if they weren't there on Monday morning, he was going to reinstate them with new employees.

Mr. Ball: Same objection.

Trial Examiner Bokat: Same ruling.

Q. (Mr. Walker, continuing) Was anything more said?

A. He said that if I would come in, he would sure make it up for me.

Q. Did you say anything to that?

A. I did not.

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Ball) Who called you to give you the first message about the store calling?

A. I don't know who the gentleman was. He gave the message that the store was calling, and he didn't say who.

Mr. Walker: I would like to have that answer read.

(Thereupon the last answer of the witness was read aloud by the reporter as above recorded.)

Mr. Ball: That is all.

Trial Examiner Bokat: Do you have anything further, Mr. [476] Walker?

Mr. Walker: No.

Trial Examiner Bokat: The witness is excused.

(Witness excused)

Trial Examiner Bokat: We will suspend for ten minutes at this time.

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Mr. Ball: The respondent requests the privilege of the Examiner to allow us to put Mr. John A. Barr on out of order.

Trial Examiner Bokat: I understand that the Board is ready to rest its case, with the exception of one witness by the name of Fullerton, and with the exception of a check to be made with regard to the Retail Clerks' claim of majority in the unit. That is a check with the payroll of the company, and inasmuch as Mr. Fullerton is not here yet, I think that it is proper for Mr. Barr to be permitted to take the stand. You may proceed, Mr. Ball.

Mr. Ball: Mr. Barr.

JOHN A. BARR

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Will you give your name and address, please, to the reporter?

The Witness: John A. Barr. My address is Gary, Indiana. [477]

Direct Examination

Q. (Mr. Ball) What is your responsibility and your association in the field of labor relations for Montgomery Ward?

(Testimony of John A. Barr.)

A. One of my responsibilities with Montgomery Ward is collective bargaining with representatives of Montgomery Ward employees and dealing with, or, rather, handling the labor relations problems of the company generally.

Q. How long have you been assigned responsibility in this field?

A. I have worked in this field for Montgomery Ward since the spring of 1937. Collective bargaining has been my definite responsibility since about September 1, 1940.

Q. What relationship does Mr. W. B. Powell have to you in the company?

A. Mr. Powell is an employee of Montgomery Ward & Company who works directly under my supervision and at my direction. Mr. Powell is located at our office in Oakland, California, and is our labor relations representative on the West Coast.

Q. And in the handling of those relations, with whom does he consult?

A. He consults with me.

Q. Have you at any time had occasion to consult with Mr. Powell?

A. Many times.

Q. Have you ever been present at any time in a collective [478] bargaining session in which Mr. Powell has been present?

A. I have.

Q. What is the policy of Montgomery Ward & Company with respect to collective bargaining?

Mr. Landye: I will object to that. That is clearly calling for a conclusion of the worst,—not of the

(Testimony of John A. Barr.)

worst, but one of the most broad possible viewpoints of policy. I think that we should have statement of acts done, and things that were said, rather than statements of policy.

Trial Examiner Bokat: I am afraid that I will have to sustain that.

Mr. Ball: I want to point out to the Examiner,—

Trial Examiner Bokat: I want to be consistent, Mr. Ball, in my rulings. Well, I will accept a general question, subject to further connection.

Mr. Ball: It certainly has relevancy to the state of mind with which the representatives assigned to responsibilities of carrying out the various duties of the office approach these matters,—

Trial Examiner Bokat: I sustained the objection originally because you have insisted right along that the witness state what was said and done and not indulge in conclusions and opinions and generalities.

Mr. Landye: This is more than a technical objection.

Trial Examiner Bokat: I didn't say it was technical. [479]

Mr. Landye: Because here, if the witness is allowed to state what is the policy, or what he intends or has intended to do as a matter of policy, it might have probative value on that type of thing, but that is not what we are concerned with here. We are concerned with the actual negotiations that were entered into; we are engaged in a trial involv-

(Testimony of John A. Barr.)

ing a charge for failure to collectively bargain. Now, if this witness is allowed to come in here and state what the policy of the company was, and what they intended to do, and so on, he has all the opportunity in the world to color his testimony with statements like that. I think that we should have some definite testimony as to what actions were taken, instead of generalities and philosophy.

Trial Examiner Bokat: I will reverse my original ruling, and see what develops. I will take it, subject to connection.

The Witness: What is the question?

Trial Examiner Bokat: Will you read the question, Mr. Reporter?

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. The policy of our company is to bargain collectively with any representative chosen by a majority of the employees in an appropriate bargaining unit.

Q. What position has the company taken towards what constitutes an appropriate bargaining unit? [480]

A. It is our position,——

Mr. Walker: Excuse me. May I ask that counsel be directed to direct his questions to any appropriate unit involved in this proceeding, at the Portland organization or Portland unit of the company?

Trial Examiner Bokat: I assume that the question is directed to that, or that it will be connected.

(Testimony of John A. Barr.)

A. (Witness continuing) It is our position at Portland, as at all other locations in the United States, that all of the employees in the retail store, with exception of the manager and his assistants, constitute an appropriate bargaining unit, and that all the employees of the mail order house, with exception of the management representatives, constitute a proper bargaining unit.

Mr. Walker: Just a minute. I move that that portion of the answer be stricken which contains the phrase "as well as all other stores of the United States."

Trial Examiner Bokart: Oh, I will let it stand for what it is worth. Actually, we are only concerned with this particular store.

Q. (Mr. Ball, continuing) What are the reasons which underlie this policy?

A. Taking the mail order house, for example, all of the employees in the house work under one management, and our schedules and wage scales of all the employees in the house are determined on [481] a housewide basis, the same factors being considered in fixing the schedules and wage scales for all the employees in the house. The activities of all the employees in the mail order house are related, and, to a large extent, are functioning interdependent. The operation of a mail order house is such that those things affecting a part of the employees necessarily affect all, so that the purposes of collective bargaining can only be carried out by bargaining

(Testimony of John A. Barr.)

for all the employees in the house, and it defeats the purpose if any special group of employees is segregated for that purpose.

The same principles apply in the retail store.

Q. Do the same principles apply specifically to Portland, Oregon? A. Yes, they do.

Q. In the course of collective bargaining, what has been your practice, and what have been your instructions to Mr. Powell as to the manner in which such collective bargaining sessions should be handled on the part of the company?

Mr. Landye: Is that restricted to Portland, or to the entire United States?

Trial Examiner Bokat: Let us restrict it to the Portland store.

Mr. Ball: I doubt if it could be. I assume the general instructions given to Mr. Powell dealt also with the Portland [482] situation. This happens to be Mr. Powell's territory.

Trial Examiner Bokat: All right.

A. In a general way, I have instructed Mr. Powell that he should meet with the employees' representatives to discuss and bargain with them over any demands which the representatives here in Portland,—that being the unions here which have been named,—presented to the management representatives.

Q. What instructions have you given with reference to discussing any problems with you that have arisen in the course of those negotiations?

A. Could you direct that to any specific phase

(Testimony of John A. Barr.)

of the bargaining? In other words, I have had a large number of conversations with Mr. Powell on the subject, and I was wondering whether you wanted me to direct those remarks, or confine my remarks to any instructions on any particular angle.

Mr. Landye: Is the witness questioning the lawyer?

Trial Examiner Bokat: Evidently, but I will let it stand.

Q. (Mr. Ball, continuing) What is the fact as to whether or not Mr. Powell did at any time during the course of his negotiations here in Portland discuss over the telephone or by letter or in any other way, the problems which had arisen in the course of negotiations?

A. Yes, he did. He discussed with me several problems which had arisen, and the principal ones which I recall were the ones which had arisen over closed shop demands which had been [483] made, arbitration demands, demands for seniority, and also Mr. Powell discussed with me on several occasions the demands for counter proposals which had been made in Portland.

Q. Now, how were these discussions with you conducted?

A. They were conducted, in the main, by telephone. They were also discussed in personal conversations, and, to some extent, by correspondence.

(Whereupon documents were marked as Respondent's Exhibits 8 and 9, respectively, for identification.)

(Testimony of John A. Barr.)

Q. (Mr. Ball, continuing) I hand you what the reporter has marked as Respondent's 8 for identification, and I will ask you if you recognize what that is; if so, tell the Examiner and the reporter what it is.

A. This is a letter which I wrote to Mr. Powell on September 11, 1940.

Q. What was the occasion of your writing that letter?

A. Mr. Powell had written me on September 9, 1940, forwarding with his letter of that date a copy of a contract which had been submitted in Portland by the Retail Clerks' Union.

Q. I hand you what the reporter has marked as Respondent's Exhibit 9 for identification and ask you if you know what that is?

A. Yes, I do. That is a letter which I wrote to Mr. Powell on October 11, 1940.

Q. What was the occasion of your writing that letter?

A. I had received a letter from Mr. Powell on October 8, [484] 1940.

Q. And subsequent to the writing of the two letters, Exhibits 8 and 9, did you have occasion at any time to discuss with Mr. Powell whether or not he had received these instructions and had carried them out?

A. Yes; and he told me that he had received them.

Q. He told you that he had received them and carried them out? A. That is correct.

(Testimony of John A. Barr.)

Mr. Ball: Might I complete the record at this time by making an offer of these letters?

Mr. Walker: I object to Respondent's Exhibits 8 and 9 upon the ground *that the ground* that the same are hearsay.

Mr. Landye: Let the record show that counsel for the union enter the same objection; they are self-serving documents, not binding upon us or anyone else, and merely letters between company people; purely self-serving declarations.

(Thereupon a document was marked as Respondent's Exhibit 10 for identification.)

Trial Examiner Bokat: I am ready to make my ruling on Respondent's Exhibits 8 and 9 for identification. I will overrule the objections, and the reporter will mark them as received in evidence.

(Whereupon the documents heretofore marked as Respondent's Exhibits 8 and 9 for identification, were received in evidence.) [485]

RESPONDENT'S EXHIBIT 8

Chicago, Illinois

September 11, 1940

Mr. W. B. Powell

Law Department

Oakland, Cal.

Re: Retail Clerks' Union—Portland, Ore.

I have your letter of September 9th together with the attached copy of the proposed agreement submitted by the local union at Portland. You are cor-

(Testimony of John A. Barr.)

rect in your intention to raise the question with regard to representation as well as to appropriate unit. The unit issue is particularly pertinent here inasmuch as I understand that the retail clerks' union claims to represent certain classifications of mail order employees as well as retail store employees. Although it is not our policy to bargain with minority groups, it is perfectly satisfactory to discuss the terms of any proposed agreement with union representatives. The important thing in this regard is that we make our position known to the union representatives in a frank way so that there will be no misunderstanding.

Our thinking with regard to arbitration clauses is that they are not acceptable to us. We are not prepared to voluntarily relinquish any of the prerogatives of management in our dealings with the union. It is impossible to agree to any sort of an arbitration set-up without to some extent vesting in an outsider a decision-making prerogative which we feel must be retained within the management.

If there are any other provisions which give you concern do not hesitate to write.

J. A. B.

JOHN A. BARR

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 9

cc: Mr. Heidenger

Chicago, Oct. 11, 1940

Airmail

Mr. W. B. Powell

Law Department

Oakland, Cal.

Re: Retail Clerks' Union—Portland

I have your letter of October 8th. We have no objection to your discussing one proposed agreement with the two unions as suggested by your letter.

I would attempt to secure from them the exact number of retail store employees whom they claim to represent. You should tell them that you are not interested in determining the identity of their members but feel, that for your own personal protection in dealing with them you should have more definite information than that contained in their letter of October 2nd. However, if they refuse to give further information along this line, there is no objection to your proceeding on the basis of their October 2nd letter.

Our position with regard to the request for a counter proposal has been that we stand ready to discuss with the union each of their demands and to explain clearly and frankly the company's position in regard to each demand. You may further tell

(Testimony of John A. Barr.)

the union that they can consider your statement of the company's position as a counter proposal if they desire; regardless of what it is called, that is the company's position on the matter. I don't see that we should quibble over the term "counter proposal" and I suspect that, in effect, our statement of the company's position with regard to any union demand is a counter proposal. To date, however, we have not submitted any formal written counter proposal to a union. If you have a situation arise where you think it would be advisable to submit a formal counter proposal, I would appreciate your getting in touch with me before doing so.

JOHN A. BARR

Q. (Mr. Ball, continuing) I hand you what the reporter has marked as Respondent's Exhibit 10 for identification and ask you if you know what that is; if so, will you tell the Examiner and the Reporter?

A. Yes, I do. It is a letter which I wrote to Mr. Powell on November 1, 1940.

Q. And all these letters,—these three letters are the original letters, although they are on thin paper?

A. They are.

Mr. Ball: I think that we might offer into evidence Respondent's Exhibit No. 10. Let me ask one further question.

(Testimony of John A. Barr.)

Q. (Mr. Ball, continuing) The occasion for writing this letter was what?

A. I received a letter on October 28, 1940, from Mr. Powell, in which he enclosed a copy of the contract which had been submitted by the Warehousemen's Union; and this was in answer to his letter.

Q. Did you have occasion later on to discuss with Mr. Powell as to the contents of this letter, and whether he had carried out the instructions therein contained?

A. Yes. He received it, and he carried out the instructions.

Mr. Walker: I have no objection.

Mr. Landye: No objection.

Trial Examiner Bokart: There being no objection, it will be received and marked in evidence.

[486]

(Whereupon the document heretofore marked as Respondent's Exhibit No. 10 for identification was received in evidence.)

RESPONDENT'S EXHIBIT No. 10

Chicago

Nov. 1, 1940

Mr. W. B. Powell

Law Department

Oakland, Calif.

Re: Warehousemen's Union—Portland

I have your letter of October 28th together with attached copy of the agreement proposed by the

(Testimony of John A. Barr.)

union. Inasmuch as this agreement more or less follows the usual form there is probably nothing which I can add to your present thinking on the matter.

It seems to me that a statement such as that contained in the first sentence of Article 1 is really a statement of fact and is not a matter upon which the parties are free to agree or not agree. If the Union desires a statement of this nature in the agreement I believe that it should be stated in the form of a fact in a preliminary "Whereas" clause rather than in the body of the agreement. Also, I don't believe that we should agree that any employee or class of employees should or should not be members of the Union as set forth in the second sentence of Article 1. We should leave it to the unilateral decision of the Union whether or not superintendents should be members of the Union.

The preferential hiring and Union shop provisions of Article 2 are not acceptable. On a matter such as this where our objection is to the substance of the proposal rather than to the form in which it is presented or with respect to some details, it seems to me that there is no obligation upon us to make a counterproposal. In other words, there is nothing in the nature of a union shop or a preferential shop which is acceptable to us which could possibly form the basis of any counterproposal.

The standards of hours and wages discussed by Articles 3 and 4 of the agreement are largely local

(Testimony of John A. Barr.)

and the company's position on these would largely depend upon our policy of meeting the wage and hour standards of responsible competition in the community. Overtime, however, at the rate of time-and a half, should undoubtedly be figured upon a weekly basis of forty hours a week rather than upon a daily basis.

Article 6 appears to be ambiguous. I am not at all sure of what they are trying to say. Also, it seems from the wording of the Article that they are talking about something which may or may not happen in the future and are not bargaining over present working conditions.

There may be some peculiar situation in Portland at which Article 7 is aimed and I would hesitate to express an opinion without knowing all the facts. It would seem, however, that under normal conditions an employee should not be worked more than five consecutive hours without a meal period.

Section 1 of Article 8 is again merely a restatement of a requirement of the law and therefore cannot be the result of bargaining. If such a statement has any place in the contract at all it would be in a preliminary "Whereas" clause. Sections 2 and 3 of Article 8 are subject to substantive objections with which you are well acquainted.

With regard to Article 9, I would feel perfectly free to explain to the Union that the Company has no seniority policy in the sense that "seniority" is understood by the Union and that we do not pro-

(Testimony of John A. Barr.)

pose to adopt such a policy at this time. When pushed for a statement of our position on this subject, I have often stated that the Company's policy is rather an intangible one and difficult to reduce to words. However, it may be stated somewhat as follows: "The Company will determine questions of lay-off and re-hiring on the basis of various factors which the Company considers properly pertinent to the appraisal of individual employees including such factors as seniority, proficiency, adaptability, flexibility, promotability, ability, age, physical fitness and marital status." I fully agree with one union who has described a statement quite similar to the above as "What a mess of words". Nevertheless, it represents as nearly as I have been able to reduce it to words the Company's policy with regard to seniority, and we all realize that it simply is not seniority in the sense that the Union uses the term.

We certainly can have no objection to the first sentence of Article 11. In fact, this is a sentence which we should probably insist upon being included in connection with any agreement. I should say that we have no objection to the second sentence of Article 11, and that the third sentence is one which should be bargained and as to which you should exercise your own judgment on whether to give or not.

We would have no objection to Article 10 insofar as it pertains to our practice on vacations, but I am

(Testimony of John A. Barr.)

not clear as to what, if anything, is added by the last clause of the sentence providing for vacations of not less than one week.

We have no objection to the first sentence of Article 12.

You are of course acquainted with our position with regard to a Board of Arbitration as proposed in Article 13.

We discussed the subject of Article 14 in our telephone conversation the other evening so you are acquainted with the latest thinking on this.

I anticipate that you will have a rather interesting session with this group and we will of course appreciate your keeping us advised on the developments.

J. A. B.

JOHN A. BARR

JAB/s

Trial Examiner Bokar: All right, proceed.

Q. (Mr. Ball, continuing) Now, in the course of your discussions with Mr. Powell, about the Portland negotiations, did you ever have occasion to discuss the problem of a closed shop?

A. Yes, I did.

Q. And when I speak of a closed shop, what meaning do you attach to that phrase?

Mr. Landye: I will object to that as incompetent, irrelevant and immaterial.

(Testimony of John A. Barr.)

Trial Examiner Bokat: I will overrule it at this time.

A. To me, a closed shop means some arrangement whereby it is necessary for the employees to belong to the union involved in order to secure and maintain their employment with their employer. It is sometimes referred to, and quite commonly, as a union shop or preferential hiring. In fact, there are many phrases which are commonly used, all of which properly mean "closed shop".

Trial Examiner Bokat: To you?

The Witness: That is right.

Q. (Mr. Ball, continuing) It is in such a sense that you have employed the word in your instructions to Mr. Powell? [487]

A. That is right.

Q. Have you advanced, or what instructions have you given as to the attitude Mr. Powell should take in these negotiations towards a closed shop?

A. I have told Mr. Powell that we were not in favor of a closed shop, and that we could not agree to closed shop proposals which were made to us in Portland by both the Warehousemen's Union and the Retail Clerks' Union, and I told him why we took that position, and pointed out to him why the closed shop.—

Mr. Landye: I don't want to be renewing my objection all the time, but all these conversations between the witness and Mr. Powell are absolutely hearsay of the worst kind; we were not there, and

(Testimony of John A. Barr.)

we have no chance to adequately examine on what Mr. Powell may have said. I realize now that he is stating what he said, but I know what it is leading up to.

Trial Examiner Bokar: I will let it stand as one of the instructions given by him to one of his subordinates on labor relations here in Portland.

A. (Witness continuing) I said that we were opposed to a closed shop, because it unreasonably restricted the freedom of the management's choice of employees. It is one of the responsibilities of the management to choose the best and most available employees for the jobs available, and it is not in the interests of efficient management that the door should be [488] closed to that group who either are not members of the union or who, for some reason, will not become members of the union.

Mr. Landye: I move to strike the whole answer on the ground that it calls for an opinion and conclusion of the witness.

Trial Examiner Bokar: There is merit to the objection, but I am going to deny the motion.

A. (Witness continuing) I stated that we were opposed to the closed shop, secondly, because we felt that each employee should be free to exercise his own individual choice as to whether he would or would not belong to a labor organization.

Mr. Landye: May I renew my objection again at this point?

(Testimony of John A. Barr.)

Mr. Ball: May we have the complete answer, and then he can make the objection afterwards?

Trial Examiner Bokat: Let him complete the answer.

A. (Witness continuing) Further, as the law restrains us from using our economic power to restrain employees in any way from becoming members of a labor organization, by the same token, we feel that we should not coerce them to become members of any union.

Trial Examiner Bokat: Is that what you told Mr. Powell, or is that your philosophy?

The Witness: It is both. I have told Mr. Powell that. I also told Mr. Powell, as a third reason for our being opposed to a closed shop, that the closed shop tends to create a monopoly in the labor market, which we feel, is economically unsound. [489]

Fourthly, we feel that if the union in question is worth while, or is a worthwhile organization from the employees' standpoint, that they will join it; that is, the employees will, of their own volition, because it is in furtherance of their own interests voluntarily to join the union, and in that case, the protection of a closed shop is not necessary.

If, on the other hand, the union is not worthwhile from the employees' standpoint, then it does not deserve the protection of the closed shop.

Q. (Mr. Ball, continuing) Did you at any time instruct Mr. Powell to state those reasons as the company's position in the course of the collective bargaining discussions?

(Testimony of John A. Barr.)

A. Not specifically. However, I have told Mr. Powell that, on many occasions, that he should state the company's position fully with regard to any demands which were made by the union.

Q. What, if any, discussion have you had with Mr. Powell with reference to the negotiations on the subject of seniority?

Mr. Landye: Same objection.

Trial Examiner Bokart: I will make the same ruling.

A. I have told Mr. Powell in that regard, that the company has no principle of seniority, as that term is used by the unions, in the sense of strict seniority. I have told him, however, that the company does recognize seniority or length of service in determining lay-offs, but not as a sole determining factor, but that it considers seniority or length of service [490] as one factor along with the ability and proficiency of the employees involved.

Q. (Mr. Ball, continuing) In the course of your instructions and discussions with Mr. Powell over the handling of the discussions here in Portland,, have you had opportunity to discuss with him such matters as arbitrations, or any other subject matter relating thereto? A. Yes.

Q. What has been the subject of those discussions with Mr. Powell?

A. I have told Mr. Powell that the company was opposed to the principle of submitting disputes of that nature to a board of arbitration because, in the first place, we favored the handling of such dis-

(Testimony of John A. Barr.)

putes by a process of negotiation directly with the union rather than by arbitration. In the second place, we don't feel that the management could satisfy its obligation as manager and at the same time surrender its decision-making power to a third or independent person or body which person or body is not responsible to the company.

Q. What is the fact as to whether or not Montgomery Ward has any labor contracts containing a closed shop clause?

A. Montgomery Ward does not have any labor contract with a closed shop clause in it.

Q. Have you at any time had occasion to discuss with Mr. Powell, in connection with the Portland negotiations, the subject of counter proposals, so-called, and if so, what [491] has been the course of those discussions?

A. Yes. I have discussed the matter of counter proposals with Mr. Powell at some length. I have told Mr. Powell that, in my opinion and in the opinion of the company, counter proposals were not necessary to the process of bargaining. I pointed out to him that counter proposals, in the sense of making an offer to the Union which offers something over and above the status quo so far as the existing wages, hours and working conditions are concerned, are, of course, not necessary, and should never be made unless they are actually justified from an economic standpoint.

(Testimony of John A. Barr.)

I have also pointed out to Mr. Powell that a counter proposal in any formal written manner stating only the status quo condition should not be made during the process of bargaining at any point until it, or rather, when it did not appear that such a proposal would be suitable to the union, because, in my opinion, to do so would be poor bargaining, and would weaken the position of the company as party to the bargaining process.

I have also stated to Mr. Powell that, in the absence of some special circumstances, at least,—circumstances which do not exist in the Portland situation,—that the bargaining should be kept on an oral basis, because, by so doing, the negotiations would be more flexible; I have told him that during the initial stages of bargaining, when the parties were not in substantial agreement, the exchange of formal, written [492] proposals or counter proposals, was not only a waste of time but actually destroys their flexibility. I have stated to Mr. Powell that it was only after the parties to the bargaining process were in substantial agreement on the major point being bargained, that it was appropriate for the parties to then take an interest in the particular wording of the provisions of the contract being bargained, and that then was the time to reduce the matters being bargained preferably on an oral basis, to writing; and that that stage was never reached in Portland, to my mind.

(Testimony of John A. Barr.)

Q. What instructions, if any, have you given Mr. Powell further in regard to counter proposals?

I will withdraw my question.

A. Mr. Powell specifically asked me during the course of bargaining here in Portland whether or not a written counter proposal should be made, stating at the time that the representatives of the union had asked him, or rather, the company, for a counter proposal; and I instructed Mr. Powell that he should not submit a written counter proposal at that time.

Q. What instructions, if any, have you given Mr. Powell with reference to his handling of the Portland situation, with regard to stating the Company's position with respect to any demands made by the Union which the company considered objectionable?

A. I have told Mr. Powell on several occasions that, as to any demand which any union might make of the company, that we should [493] state to the Union the Company's position with regard to that demand fully, and that he should state to the Union that, if they wanted to consider that as a counter proposal, we had no objection, of course, to that; that all we could do with regard to any demand made upon the company was to state to the Union our attitude towards it, and if they cared to consider the statement of our attitude towards it, or any suggestions that we may have made with re-

(Testimony of John A. Barr.)

gard to it as a counter proposal, they were, of course, at liberty to do so.

The label "counter proposal", I suppose,—

Mr. Walker: Now, let me object. Isn't that,— is that phrase that is about to be stated by the witness, prefaced with "I suppose", actually a part of what you said to Mr. Powell? I think that should be clear, although I am objecting to this whole line of testimony as irrelevant.

Mr. Landye: We are getting to a matter of fairness now. This has gone on for some considerable time. I am going to object to this whole line, and in my objection, I want to state that I think that we should have what was said and done in the actual negotiations, and not a statement of philosophy which is self-serving testimony of the worst kind. We are not interested in what he told Mr. Powell. We have no way of finding out any of this; none of us were there. This can go on indefinitely.

Trial Examiner Bokat: I am going to permit him to state [494] what he instructed Mr. Powell, and accept it subject to some connection. I assume, of course, Mr. Powell will take the stand and carry on where this gentleman leaves off and describe what actually took place in the Portland negotiations, or in the discussions, if you prefer to call it that. Let us proceed.

Q. (Mr. Ball, continuing) Did you have, on any occasion, a discussion with Mr. Powell in connection with his negotiations at Portland, particularly with

(Testimony of John A. Barr.)

relation to the problem of an agreement on certain sections when other sections were not agreed upon?

A. Yes, I did.

Q. What was the discussion with Mr. Powell in regard to that?

A. I told Mr. Powell that in bargaining on a trade contract, that such a contract could only be agreed to in its entirety, or in an entire agreement; and that a good bargainer should never agree to any one section of a contract so long as other material sections of the proposed contract were in disagreement, because a change in one working condition might reflect itself in other working conditions; and I told Mr. Powell in his bargaining with reference of a contract, if such a clause taken up was apparently agreeable with the company, or any particular section, to state, in substance, "I see no present objection to that clause", but not to bind himself, or, through him, bind the company to that particular clause as an isolated section in the form of an agreement. I have stated that to [495] Mr. Powell several times.

Q. Do you recall having met Mr. Estabrook in Washington?

A. Yes, I met Mr. Estabrook in Washington on Sunday, September 8, 1940.

Q. What was the substance of the conversation that you had with Mr. Estabrook?

A. I met Mr. Estabrook at the ball game on Sunday afternoon in Washington. The meeting

(Testimony of John A. Barr.)

was a chance one, and it was quite brief. We exchanged greetings of the day, and made some comment upon the game, and Mr. Estabrook then made the remark that he didn't want to talk business on Sunday, but asked me if he could have an appointment with me in Chicago, on his way back to the Coast. I said, "Yes, I will be glad to see you."

Q. Did he say to you at that time that he would see you on his way back to the Coast?

A. Yes.

Q. Did he see you on his way back to the Coast?

A. Approximately two weeks later, I received a call from Mr. Estabrook. He said that he was calling from New York. He asked for an appointment which was arranged, and then two or three days later, sometime during the last week in September, Mr. Estabrook called on me at my office in Chicago.

Q. What took place at that meeting?

A. Mr. Estabrook said that he was on his way home, that he had [496] been away for several weeks in the East, and that he wanted to negotiate a contract on behalf of the Warehousemen's Union in Portland, and he wanted to ask me with whom he should negotiate; and I said to him that he should negotiate his contract with Mr. Powell, who was located in Oakland, and Mr. Huddleston, the manager of our mail order house in Portland.

He said that he thought maybe someone in Chicago would be the proper party to bargain with in

(Testimony of John A. Barr.)

regard to a contract, and if that was so, he would be glad to come to Chicago for that purpose. I said "no", that would not be necessary, that Mr. Powell, located at Oakland, had full authority to negotiate for the company.

Mr. Estabrook said that the matter had been delayed somewhat because he had been away from Portland for some time since the Labor Board certification of his union, but that when he got back to Portland, they would whip up a contract, as he called it, and that they would want to meet with us.

I told him that whenever he was ready he should call Mr. Huddleston, and Mr. Huddleston would immediately call Mr. Powell, and that I was very sure a meeting could be arranged shortly thereafter.

Mr. Estabrook asked me if Mr. Huddleston and Mr. Powell would actually have authority to negotiate with his union, and I said that they would have such authority. I stated that Mr. Powell had full authority to negotiate with them. Of course, [497] I stated, it was quite possible that some question or some problem might arise during the course of the negotiations which Mr. Powell would want to take up with me, and, I stated, if such a situation should arise, it would not unreasonably delay these things, because Mr. Powell could get in touch with me quite readily. Mr. Estabrook said that was perfectly all right with him. He stated that he just wanted to ascertain from me whom the bargaining should be done with.

(Testimony of John A. Barr.)

Q. As a matter of fact, did Mr. Powell in the course of negotiations in Portland take advantage of discussing with you problems that arose on policy?

A. He did, on several occasions.

Q. And did you in each case give him the answer?

A. I did, to the best of my ability.

Q. At that time, did Mr. Estabrook hand you a copy of the proposed contract?

A. No, he didn't.

Q. Did he make any reference to the existence of such a contract at that time?

A. He didn't say directly either that a contract did exist, or that one did not exist. He did say this: "When I get back to Portland, we will whip up a contract and then I will want to talk with you." And he also said, "Don't be scared when you see it. Of course, we will ask for more than we expect to get, because that is the way things are done." [498]

I said, "I am sure that you can arrange for your meeting in Portland and that things will be all right."

Q. Did you have occasion to go to California in December of 1940? A. Yes, I did.

Q. On what dates were you in Oakland, California?

A. I arrived in Oakland on December 10, 1940, and left Oakland, I believe, on December 20, 1940; and I was in Oakland during all of the intervening period.

Q. Did you have occasion to see Mr. Powell when you were in Oakland at that time? A. I did.

(Testimony of John A. Barr.)

Q. What was the occasion of your going to Oakland at that time?

A. I went to Oakland to consult with Mr. Powell regarding several matters there; as a matter of fact, I went there to consult with Mr. Powell and other company representatives at that point with regard to the labor situation which had developed on the Coast during the two weeks prior to my going there.

Q. During the course of that time when you were on the Coast, did you have occasion to meet with a Mr. Thomas White?

A. Yes, I did. I met with Mr. White on three occasions.

Q. At any time during those meetings, did Mr. White indicate or state that he was speaking in those discussions with you on behalf of the Retail Clerks or the Warehousemen, or both, located at Portland? [499]

A. Yes, he did. I met with Mr. White on the afternoon of December 11, in Oakland, and at that time he expressly said that he was fully authorized to speak for the Warehousemen's Union, the Retail Clerks' Union and the Office Workers' Union at Portland, as well as the unions involved in the labor dispute at Oakland.

Q. At that time, did he indicate, or rather, did he later indicate if he did, that he no longer possessed such authority?

A. He gave what I considered to be an indication of that the following day.

(Testimony of John A. Barr.)

Q. What day would that be?

A. December 12.

Mr. Landye: I move to strike that as an opinion and conclusion of the witness.

Trial Examiner Bokat: I think that you had better rephrase the question.

Q. (Mr. Ball, continuing) What did Mr. White say to you on the following day?

A. On the following day, Mr. White said that he was going to let Jack Estabrook run his own show in Portland.

Trial Examiner Bokat: What date was that?

The Witness: December 12, 1940.

Q. (Mr. Ball, continuing) And do you know of your own knowledge what time it was that Mr. Powell left Oakland to go to Portland, in the month of December? [500]

A. As I recall it, Mr. Powell left Oakland on December 12, 1940.

Q. And before he left, did he have any occasion to discuss the matters that he was going to handle at Portland?

A. In a general way, yes, and after he came to Portland we were in touch with each other by telephone several times. Mr. Powell was in Portland December 13, 14, 15, and 16. As I recall, he returned to Oakland on the 17th.

Q. What is the fact as to whether or not you have ever had any occasion to discuss with Mr.

(Testimony of John A. Barr.)

Powell the Company's wage policy with respect to the Portland negotiations?

Mr. Landye: That is objected to as leading, very leading. I have let a lot of this go in, but that is very leading.

Trial Examiner Bokat: Yes, it is, but I am going to let it stand, to save time.

A. I have discussed the company's wage policy on several occasions. I have told him that it is the company's policy to pay wages which are as high or higher than the wages paid by competition for the same or similar work in the community. I have told Mr. Powell that it is one of his responsibilities to determine that the policy is carried out,—to ascertain what the facts are and to see that the policy is being carried out, or, rather, to ascertain if the policy is being carried out, whenever any question is raised concerning the company's wages. [501]

Q. Have you at any time had any occasion to discuss, with reference to the Portland situation, the company's policy with respect to grievances?

Mr. Walker: I will object to that as immaterial.

Trial Examiner Bokat: Overruled.

A. I have told Mr. Powell that it is the feeling of the company that grievances of the employees, or groups of employees should be heard and considered by the management of the company; that the company was always glad to receive and consider grievances of any group of employees, or of any individual employee.

Q. (Mr. Ball, continuing) What instructions, if

(Testimony of John A. Barr.)

any, have you given him as to the action to be taken on such grievances?

Trial Examiner Bokat: There is no issue in this case concerning grievances, so far as I can see. I want to save time. We are involved more with the actual bargaining negotiations, which might have the question of grievances only as an incidental matter to the negotiations, or as a part of the negotiating process in negotiating a contract.

Mr. Ball: I take it that this subject is ruled out.

Trial Examiner Bokat: I don't want to prevent you from going ahead, but I don't think that it is within the issues.

Mr. Ball: Except that the proposed contracts submitted have some reference to grievances procedure.

Trial Examiner Bokat: Yes, I understand that, and I mentioned [502] that, I believe. However, it has more to do with the process of bargaining rather than any specific grievances that may be presented by the employees. I will let him answer the question. I don't want to limit you whatsoever, and I want to give the respondent every opportunity to defend itself against the charges.

The Witness: I would like to have the question read. I have lost the trend.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. I have stated that if any grievances arise, or any grievance is submitted by any employee, or

(Testimony of John A. Barr.)

group of employees, it can be looked into and considered promptly, and, if it is found that some corrective action is justified, it should immediately be done. I have stated that to Mr. Powell on many occasions, and that this action should be taken regardless of whether the grievances were presented by an employee who is a member of the union or an employee who is not a member of the union, or whether it was presented by a group of employees who are members or not members of the union; that is, the fact of their membership should not have any effect upon the company's action in remedying any situation which the conditions justify remedying.

(Thereupon documents were marked as Respondent's Exhibits 11 and 12, respectively, for identification.) [503]

Q. (Mr. Ball, continuing) I hand you what the reporter has marked as Respondent's Exhibits 11 and 12, and ask you if you know what they are; if so, tell the Examiner and the reporter.

A. Exhibit 11 is a page from the Oregon Journal of Friday, March 21, 1941, apparently page 15. It contains, among other things, an advertisement which was run in the paper on that date by Montgomery Ward.

Q. How about the other one?

A. Exhibit 12 is a page from the Oregonian of March 22, 1941, which contains, among other things, the statement of Montgomery Ward's position.

(Testimony of John A. Barr.)

Q. In short, it is an advertisement in that issue of the paper? A. That is correct.

Mr. Ball: I will offer Exhibits 11 and 12.

Mr. Walker: I will object to them on the ground that they are hearsay, self-serving declarations, and incompetent, irrelevant and immaterial.

Mr. Landye: Same objection.

Trial Examiner Bokar: I will overrule the objection and receive them in evidence, with this modification: that I am not accepting them as proof of the facts contained therein, but merely proof of the fact that Montgomery Ward & Company did place those advertisements in the paper on the dates [504] indicated, as indicated by the exhibits.

Mr. Ball: There is no question about the fact that those ads were run by Montgomery Ward?

Mr. Walker: No.

Mr. Landye: No.

Trial Examiner Bokar: I think there is no objection on that ground. With the modifications that I have stated, they will be received in evidence.

(Whereupon the documents heretofore marked as Respondent's Exhibits 11 and 12, respectively, for identification, were received in evidence.)

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 11

[Oregon Journal, Friday, March 21, 1941]

MONTGOMERY

WARD'S POSITION . . .

in regard to the picketing now in progress at its Portland Retail Store and Mail Order House is based upon the following simple facts:

1. Ward's Portland Store and Mail Order House were picketed December 7, 1940. This was the result of Ward's refusal to agree to a closed shop. No dispute existed as to wages or hours.

2. Wards has been denied service by the truck lines since December 7, 1940, and by the railroads since December 22, 1940.

Because of this refusal of service Wards has been unable to ship or receive merchandise by truck or rail since these dates.

3. Wards has acceded to all requests for bargaining conferences which have been made. Wards stands ready, as it always has, to bargain with any organization which represents a majority of its employees.

4. Wards will reduce to writing and sign any agreement reached as a result of such bargaining.

5. Wards has not, and will not, discriminate against any of its employees because of their

(Testimony of John A. Barr.)

membership or non-membership in any labor organization.

MONTGOMERY WARD and COMPANY

RESPONDENT'S EXHIBIT No. 12

[The Oregonian, Saturday, March 22, 1941]

MONTGOMERY

WARD'S POSITION . . .

in regard to the picketing now in progress at its Portland Retail Store and Mail Order House is based upon the following simple facts:

1. Ward's Portland Store and Mail Order House were picketed December 7, 1940. This was the result of Ward's refusal to agree to a closed shop. No dispute existed as to wages or hours.

2. Wards has been denied service by the truck lines since December 7, 1940, and by the railroads since December 22, 1940.

Because of this refusal of service Wards has been unable to ship or receive merchandise by truck or rail since these dates.

3. Wards has acceded to all requests for bargaining conferences which have been made. Wards stands ready, as it always has, to bargain with any organization which represents a majority of its employees.

(Testimony of John A. Barr.)

4. Wards will reduce to writing and sign any agreement reached as a result of such bargaining.

5. Wards has not, and will not, discriminate against any of its employees because of their membership or non-membership in any labor organization.

MONTGOMERY WARD and COMPANY

Mr. Ball: That is all. Your witness.

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Trial Examiner Bokat: We will recess at this time until 7:00 p. m.

(At 5:55 p. m. the hearing was recessed until 7:00 p. m.) [505]

Evening Session

Trial Examiner Bokat: The hearing will please come to order.

Mr. Ball: Will you mark these, please?

(Whereupon the documents hereinabove referred to were marked for identification as Respondent's Exhibits 13, 14, 15 and 16, respectively.)

Trial Examiner Bokat: Now you can offer them all.

(Testimony of John A. Barr.)

Mr. Ball: I offer in evidence Respondent's Exhibits 13, 14, 15 and 16; exhibits 14, 15 and 16 being produced in response to the request of Mr. Landye.

Trial Examiner Bokat: And there is no objection to any of those exhibits, I assume?

Mr. Landye: No.

Trial Examiner Bokat: They will be received and marked in evidence.

(Whereupon the documents heretofore marked for identification, respectively as Respondent's Exhibits 13, 14, 15 and 16 for identification, were received in evidence.)

RESPONDENT'S EXHIBIT No. 13

Office Workers!!

Retail Clerks!!

MONTGOMERY WARD & CO.

Retail Clerks and Office Workers of Montgomery Ward and Co. are requested to attend a meeting called in their behalf at 8:00 P.M., Tuesday, May 14, 1940, to be held in the DeMolay Room, Lower Level, Masonic Temple, S.W. Park Ave., between Madison and Main Streets.

Very satisfactory progress is being made in our endeavor to organize the employes of your store; however, it is necessary that we secure additional applications of workers in these two departments.

At this meeting we will once again go into the matter of a suitable proposed agreement to be sub-

(Testimony of John A. Barr.)

mitted to your employer, which will effect all workers in these two classifications. Come and discuss this very important matter with us.

Office workers includes those doing clerical work or operating any type of office equipment in the following departments or offices: Stock record office, Credit office, Order office, Retail store office, Personnel office, and the following departments: Adjustment, Traffic, Entry, Mail opening, Index, Pricing, Accounts Payable, Timekeeping, Factory Order, House Auditing, Folder billing, Freight billing, C.O.D. billing and billers in Packing department.

Retail clerks includes all employes actively engaged in handling or selling merchandise in all of the Retail departments, including stockroom men, salespeople, window trimmers, catalogue-order girls, etc.

OFFICE EMPLOYES UNION

Local 16821

J. HOWARD HICKS,

Secty.

RETAIL DEPT. STORE CLERKS

UNION Local 1257

FRED DIXON,

Secty.

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 14

Personal & Confidential

Airmail

Oakland, California

September 9, 1940

Mr. J. A. Barr

Law Department

Chicago, Illinois

Re: Labor Relations—Portland Retail Store

Attached is a copy of proposed agreement submitted by the Retail Clerks Union in Portland, Oregon, to Mr. Barth our store manager.

Mr. Barth stated to the Union that he would have to refer the agreement to the Oakland office. The Union claims that 95% of the store employees are members of the Union, whereas Mr. Barth believes that at the present time the Union does not have a 50% membership.

Of course, when we enter into a bargaining session with the Union we want to raise the question of appropriate unit and the question of representation. However, I presume that after we have raised those questions we should remain willing to discuss the terms of the proposed agreement.

Will you please let me know the present thinking in regard to arbitration clauses.

W.B.P.

W. B. POWELL

WBP:RD

Law Department

Enc.

Ans. 9/11/40

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

DEPARTMENT STORE
WAGE SCALE AND AGREEMENT

of

RETAIL CLERKS UNION, LOCAL 1257

Retail Clerks International Protective Assn.

Between _____, of Portland, Oregon
and Local No. 1257 Retail Clerks International Protective Association, of Portland, Oregon, Affiliated with the A. F. of L.

This Agreement, mutually made and entered into this day _____ of _____, 1940, by and between _____ of Portland, Oregon, Party of the First Part, and the Retail Clerks International Protective Association, Local No. 1257, of Portland, Oregon, Party of the Second Part, to-wit:

Section 1. Employers shall be entitled to employ or hire any employees, provided, however, that such employees shall make application within two (2) weeks after being employed to become a member of the Union and if satisfactory to the employer and found worthy by the Union he will be admitted to full membership in the Union.

(a) A temporary working permit good for thirty (30) days only shall be secured by all new or extra salespeople, not members of the Union at the time of employment, provided they are employed more than one (1) day. No working permits shall be issued until all available regular employees of the company

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

are restored to full time service if competent, and available. All new steady employees working half time or in excess, shall be issued a permit for thirty (30) days only, at the expiration of which time they shall affiliate with the Union, provided, they are still employed half time, or in excess. Regular extra employees who are employed less than half time shall secure a working permit from the Union the first of every month.

Section 2. All persons employed by the Party of the First Part who are actively engaged in selling shall be members of the Retail Clerks Union, Local No. 1257, and all other employees as designated by ensuing classifications shall be members of Local 1257. Window trimmers and assistants; mail order department employees; floor cashiers; outside salesmen; marking room employees; bundle wrappers; and all other employees not coming under the jurisdiction of any other Union, except executives. The exception of the executives are to be agreed upon between the Business Representative of the Union and the Representative of the employer.

Section 3. No male employee shall be discharged and replaced by a female employee unless the female employee shall receive the minimum wage for men as classified. This shall not apply when a male employee leaves the company of his own accord or is dismissed for good and sufficient reason.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

Section 4. No regular full time and no regular part time employee shall suffer any reduction of pay or be required to make up any time for holidays, the following holidays are to be observed; New Year's Day; Memorial Day; Fourth of July; Thanksgiving Day; Labor Day; and Christmas Day, and all other holidays nationally or locally observed by the stores parties to this agreement. When a holiday falls on Sunday the following Monday shall be observed.

Section 5. In the laying off of help due to slackness of business and in the consequent re-employment, seniority rights shall be observed.

Section 6. A mutually agreeable system shall be worked out between the employers, parties to this agreement, and the Union, to permit the Union activities of receiving complaints and collecting dues during working hours, provided that such activities shall be conducted at reasonable times and so as not to interfere unreasonably with the conduct of the employers' business or interrupt or interfere with the performance of work.

Section 7. There shall be no discrimination by the Employer against any employee or applicant on account of membership in or activity on behalf of the Union.

Section 8. Duly authorized representatives of the Union, not on the payroll of the employer, shall be permitted to visit the stores, for the purpose of

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

observing conditions under which members of the Union are working, and to see that the agreement is observed; provided that such visits shall not be made during rush hours, and that the time of such visits shall be first arranged with the Employer. The Employer agrees to cooperate in arranging for such visits at reasonable times and to name two (2) or more persons in each store, each of whom shall have authority to make arrangements for such visits.

Section 9. The Employer shall provide in each store a bulletin board or boards, conveniently located, for the posting of notices of official business of the Union. The Union agrees that it will not distribute handbills, posters, or other literature within the store. The Employer will provide a receptacle or receptacles, at or near such bulletin board or boards in which the Union may place such notices of official business from 2 o'clock on.

Section 10. For the purposes of this agreement, employees are designated as:

- (a) Regular full-time employees
- (b) Regular short-hour employees
- (c) Extra employees

They are defined as follows:

(a) Regular full-time employee is one who has been employed to work a full number of hours each week. Any employee continuously employed on a

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

full-time basis by the Employer for at least six (6) months shall be considered a regular full-time employee.

(b) A regular short-time employee is one who has been employed regularly less hours per week than a full working week. Any employee who has been continuously employed by the Employer on a short hour basis for at least six (6) months shall be considered a regular short-hour employee.

(c) An extra employee is one employed for temporary work.

(d) a break of service shall not prevent such service from being continuous under subdivisions (a) or (b) of this section, provided that six (6) months of actual service shall have been rendered within a total period of two (2) years from commencement of employment.

Experience shall be based on the total experience accumulated in retail stores or departments of the same classifications.

(e) It is understood and agreed that all of those employees who were employed as regular full-time employees, or regular shorttime employees, as of _____, and who, at the time of signing of this agreement will not have had six (6) months service shall automatically be rated as regular full-time employees, or regular short-hour employees as the case may be.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

(f) The term "regular" used in this section, refers to the status of an employee within the particular establishment in which he is working. To attain such regular status the employee must have had six (6) months of continuous employment, as defined above, with the same employer in Portland.

Section 11. (2) Each employee shall be provided with a card setting forth classification of employment, wage, and daily schedule of hours of employment with the starting and finishing time for each day.

(b) Immediately after the signing of this agreement there shall be established a Classification Committee composed of three (3) representatives of the Employer and three (3) representatives of the Union. It shall be the duty of this Committee to pass on all matters pertaining to adjustments of the classification of employment.

Section 12. (a) Forty-four hours completed within six days shall constitute a week's work. Employees shall be placed on a straight time schedule of hours, such schedule to be entered on employees' classification cards. Before any change is made in any such schedule one week's notice shall be given to the employees affected, except in cases of emergency or where the change is mutually agreed to by the Employer and the employees affected.

(b) Overtime shall be paid for at the rate of time and one-half.

(Testimony of John A. Barr.)

All sales or transactions are to be completed if they are taking place at the normal quitting time of the employee without payment of overtime.

(c) Overtime shall be paid for all work prior to 9:15 a.m. or after 5:45 p.m., as the case may be, and except in the case of those employees whose work must necessarily be performed in whole or in part before 9:15 a.m. or after 5:45 p.m. as the case may be.

(1) Mail openers and distributors, sales audit clerks, cash register readers, stock distributors:

(2) Extra wrappers, packers, parcel post and delivery employees who on Saturdays are required to report for duty after 1 p.m.:

(3) Employees required for inventory work on one night in January and one night in July.

(d) Outside salesmen, collectors, appraisers and adjusters shall be exempt from all limitations of hours except when required to do inside work.

Section 13. No one shall be sent to lunch prior to eleven (11:00) A.M. Every employee shall be sent to lunch at least within five (5) hours of the time of their reporting to work. Any employee who works in excess of five (5) hours without lunch period shall receive overtime for all such work performed in excess of five (5) hours. All sales or transactions shall be completed if they are taking place at the time the person is to go to lunch, without the payment of overtime.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

Section 14. When a company doctor pronounces an employee physically unfit to carry on their active duties as an employee; the employee shall have the right to demand an examination by an outside doctor supplied by the Union. If the two doctors are unable to agree on the diagnosis they shall call in a third doctor and the decision handed down by the third doctor shall be binding. The cost shall be borne equally by the employer and the Union.

Section 15. (a) All regular employees who have been in the service of the employer continuously for one year shall be granted a minimum of one week's vacation with pay. All regular employees who have been in the service of the Employer continuously for two years shall be granted a minimum of two weeks' vacation with pay. In cases where stores have vacation policies which are not in conflict with the foregoing said policies may be retained. Vacations shall be granted between April 1 and October 1 or at other times if mutually agreeable. This provision shall be effective after the current vacation schedule.

(b) In the case of regular short-hour employees pay for the vacation period shall be the average weekly pay received by such employee during the year preceding the vacation.

(c) Leaves of absence or any employee called for government service shall be granted at the discretion of the Employer, and when so granted em-

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

ployee shall be assured of his return to employment without loss of standing.

Section 16. Employers shall have the right to discharge any employee for unbecoming conduct, insubordination, incompetency, neglect of duty, failure to perform work as required not contrary to the terms of this agreement, or to observe safety rules and regulations, or the employer's store rules, which shall be conspicuously posted. If any employee feels he has been unjustly discharged, he shall have the right to appeal to the Adjustment Board.

Section 17. To insure that full and fair consideration be given all employees in filling vacancies or new positions, in making transfers, promotion, or wage increases, the Employer agrees to review regularly the records of all employees.

Section 18. It is understood and agreed that quota systems shall not be used as the sole basis for discharges.

Section 19. Stock help shall be provided for the Women's Coat Departments, Yardage and Blankets.

Section 20. (a) The Employer may require sales employees to do non-selling work providing that such assignments shall not be made during the peak hours and recognizing at all times the common interest of the Employer and of sales employees in the enjoyment by the latter of all reasonable and practicable opportunities of effecting sales. It is

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

further agreed that such assignments shall be equitably distributed between the various members of the department.

(b) The Employer may make temporary assignments of non-selling employees to do selling work during peak hours or seasons only but keeping in mind also the common interest of the Employer and of the selling employees in the enjoyment by the latter of all reasonable and practicable opportunities of *affecting* sales.

Section 21. If compulsory sales or educational meetings are held, they shall be on the Employer's time. Provided, however, that this does not apply to applicants who do not subsequently report for work.

Section 22. All contributions to charity shall be voluntary. It is understood and agreed that no compulsion shall be placed on the employee to force contributions.

Section 23. Not oftener than once a month sales employees, upon individual request, shall be furnished with records of their sales, provided such sales are individually recorded.

Section 24. Department heads, buyers and assistant buyers, making sales, shall enter the same on a department book, such sales to be divided equally among the employees in the department, provided, however, that where a department head, buyers and assistant buyer have their own books this principle shall not apply.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

Section 25. An employee whose earning capacity is limited because of physical or mental handicap, or other infirmities, may be employed on suitable work at a wage agreeable to the Employer, the employee and the Union.

Section 26. (a) The employer agrees to pay all fidelity bond premiums. All cash deposits or cash bonds in lieu of fidelity bonds now in force will be returned to the employees so affected at once. No employee shall be required to pay any premiums on public liability and property damage insurance required by the Employer, and covering the operation of an automobile while used in the Employer's business. Charges for physical examinations or sales training, when required by the Employer shall be borne by the Employer.

(b) Any employee using his automobile for company service shall be compensated at the rate of five (5) cents per mile for all miles so used required by the Employer.

Section 27. The provisions of this agreement shall apply to all departments leased or subleased to others except where and so long as bona fide agreements or leases between the employers and the lessees or sub-lessees in force at the date of this agreement do not permit such application. Subject to the exception stated in the preceding sentence of this paragraph, the provisions of this agreement

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

shall also apply to employees acting as demonstrators or selling jointly for the Employer and others.

Section 28. Where the Employer requires employees to wear identical garb as to style or fashion, when such garb is not suitable for street wear, the Employer shall furnish the same. The Employer shall also provide for the maintenance of such garb.

Section 29. No more than one (1) apprentice shall be employed for each twenty (20) employees. These apprentices shall be reasonably divided among the different departments of the store, both selling and non-selling. It is agreed that an apprentice is an employee having less than six (6) months experience in the retail trade, who receives less than the minimum wages specified herein for experienced employees and not less than the minimum scale for apprentices as herein provided for. Time served in one or more stores as an apprentice shall be cumulative.

Section 30. No salary rate herein provided shall be considered other than a minimum wage, and no salary rate above the minimums provided herein shall be reduced.

Before any Employer terminates Group Insurance in effect at the signing of this Agreement, he shall give thirty (30) days' notice of his intention to terminate to the employees affected.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

Section 31. The following are agreed classification, minimum weekly and monthly rates of pay thereof, and special working conditions as listed under the specified classifications noted:

I. Men's clothing

\$23.00.....first year experience
\$25.00.....second year experience
\$32.00.....thereafter

(b) Men's Furnishing

\$22.50.....first six months experience
\$25.00.....second six months experience
\$27.50.....thereafter

II. Shoe Department

1. Every regular male employee shall receive a minimum wage of \$27.50 per week, or \$119.50 per month. Extra help shall receive a minimum wage of \$5.00 per day.

2. Every part time employee shall receive a minimum wage of seventy-five (.75¢) cents per hour if employee works less than a full day. Any employee shall not work less than four hours in any one day.

3. Every female employee shall receive a minimum wage of \$22.50 per week, or \$97.50 per month.

4. Every part time female employee shall receive a minimum wage based on the above minimum scale in proportion to the number of hours she

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

works bears to the full day and shall not work less than four hours in any one day.

5. Every apprentice shall receive a minimum wage as follows:

\$12.50 per week.....	\$54.16 per mo.....	first six months
\$17.50 per week.....	\$75.83 per mo.....	second six months
\$22.50 per week.....	\$97.50 per mo.....	third six months
\$25.00 per week.....	\$103.88 per mo.....	fourth six months.

6. All wages, salaries and commissions in force at the time of the making of this contract, greater than the minimum wages guaranteed under this contract, shall be continued in force, and any attempt on the part of the employer to diminish or cut down such wages or either, or both, shall constitute a breach of this contract.

7. Disregard the monthly pay clause if store is paying by week.

8. Any employee reporting for work at opening time shall receive a full day's pay.

III. Women's Ready to wear and Corsets

Women employed in Ready to wear; suits, coats, silk dresses, corseteers, gloves, piece goods, blankets, draperies, and hats shall receive the following scale:

\$16.00.....	first six months experience
\$18.00.....	second six months experience
\$22.50.....	third six months experience
\$25.00.....	thereafter

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

IV. miscellaneous classification

Service desk, candy, drugs, dry goods, wash dresses, lingerie, ladies underwear, infants wear, bargain room and markers.

\$16.00.....	first six months experience
\$18.00.....	second six months experience
\$22.50.....	thereafter

V. Hardware

Hardware, sporting goods and paints

\$20.00.....	first six months experience
\$25.00.....	second six months “
\$27.50.....	third six months “
\$32.50.....	Thereafter

VI. Jewelry

\$25.00

VII. Household

Stoves, major appliance, radios, furniture and rugs.

There shall be a minimum guarantee of \$35.00 per week for experienced men. The men to work on present percentage basis with the stipulated guarantee.

VIII. Stockmen and farm basement

\$32.50

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

IX. City Delivery

Shipping clerk	\$32.50
Dockmen	\$27.50
Supervisor	\$35.00

X. Service Station

Collectors and adjusters.....	\$27.50
Service and repairs.....	\$27.50

XI. Window trimmers and display men

Combination employees, including window trimmers or those working in more than one department shall receive one-half of the difference between the two scales applying over and above the lower scale. This provision does not apply to employees whose work in an additional department is incidental and occasional.

\$35.00

XII. Farm equipment and plumbing

\$25.00.....	first six months experience
\$27.50.....	second six months experience
\$32.50.....	thereafter

XIII. Catalog order desk

\$16.00.....	first six months experience
\$18.00.....	second six months experience
\$22.00.....	thereafter

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

XIV. Outside salesman:

The outside salesmen shall be guaranteed a weekly drawing account of not less than \$25.00 and five (5) cents mileage for all miles used for company service. Their hours will not be restricted.

XV. Tires, automobile parts and accessories

\$25.00 per week.....first six months experience

\$27.50 per week.....second six months experience

\$35.00 per week.....thereafter

Purchasing Agent—Any employee designated as a Purchasing Agent actively engaged in the Parts Department handling parts shall be paid not less than One Hundred and Seventy-five (\$175) Dollars per month.

Parts Manager—In charge of the Department and receiving in excess of One Hundred and Seventy-five (\$175) Dollars per month shall not be subject to the terms of this agreement.

All Parts Department and Accessories Departments will close to the public between the hours of 5:45 p.m. and 9:15 a.m.

Section 32. General Utility Employees

General utility employees shall be those employees not definitely regularly assigned to specific duties in any selling or non-selling department. They may be used at the discretion of the employer in any

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

department of the store and for any duties, either selling or non-selling, as the occasion arises. Their number shall not exceed six (6) for the first one hundred (100) and five (5) for each one hundred (100) thereafter.

The minimum rate of pay for such employees shall be \$27.50 per week.

Section 33. Extra Employees

All extra employees shall receive a differential of Five Cents (5¢) per hour above the scale in the classification in which they work, with a guarantee of four (4) hours pay when ordered to report for work.

Section 34. Regular short-hour employees.

Regular short-hour employees shall receive the rate of pay provided for the classification in which they are employed.

Section 35. Apprentices

The minimum weekly wage for apprentices shall be not less than Sixteen Dollars (\$16.00) per week.

Section 36.

Assistant Buyers, Department Heads, and Heads of Stock shall receive at least 10% increase in their guaranteed weekly rates above the maximum scale of their department.

Section 37.

All employees working split shifts shall receive One Dollar (\$1.00) extra per day.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

Section 38.

(a) The monthly quota shall be for each month one-twelfth of the total yearly quota of the year from to Such monthly quota shall be maintained at the same figure for each month of the year. Deficiencies shall not be carried forward from one month to another. The present rate of commissions applicable to quotas shall not be reduced, nor shall any present rate of commission be reduced. Commissions shall be paid monthly.

(b) Those employees below the minimums herein provided shall be increased to such minimums, but in no case shall employees receive less than 10 per cent increase in their guaranteed weekly salary or weekly drawing account, up to and including employees receiving \$34.99 per week as a weekly minimum guarantee or a weekly drawing account.

Section 39. Immediately upon the signing of this agreement there shall be established an Adjustment Board made up of three (3) representatives of the Employer and three (3) representatives of the Union. The Board shall meet within ten (10) days of the signing of this agreement and select by mutual agreement a panel of (5) impartial persons, any one of whom may act as arbitrator at such time as the Adjustment Board is unable to agree upon any matter referred to it.

If the parties hereto are unable to agree within twenty (20) days after the signing of this agree-

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

ment to the panel of five (5) impartial persons who may be requested to act as arbitrators,, shall each be requested to designate three (3) persons who in their opinion are qualified to act as impartial arbitrators. From the total list so made up, each party may strike two (2) names, and the remaining names will constitute the panel from which an arbitrator shall be selected as provided herein.

No arbitrator shall be chosen to serve in two consecutive arbitrations unless by mutual consent of the parties.

The Adjustment Board shall consider all complaints and disputes arising under the terms of this agreement, all questions of interpretation of the agreement and discharge cases. All discharge cases must be appealed to the Board within four (4) days from the date of discharge, otherwise the right to appeal is lost. The Board of Adjustment shall have no authority to negotiate a new agreement.

Any matter referred to the Adjustment Board shall be taken up by the Board within forty-eight (48) hours. If the Board is unable to reach a settlement within five (5) days then the matter shall be submitted for disposition to one of the persons on the panel of impartial arbitrators selected by lot. Any decision made by a majority of the Adjustment Board as a result of arbitration, shall be accepted as final and binding. Any expenses incurred as the

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

result of arbitration shall be borne one-half by the Union and one-half by the Employer.

Section 40. In consideration of the Employer signing this agreement and fulfilling the conditions thereof, the Association agrees to notify its membership, the Central Labor Council of Portland, Oregon, and the District Council of the State Oregon and that the Employer herein has signed this collective bargaining agreement with the Association. The Association further agrees to loan to the Employer Union Card No. the property of and issued by the Retail Clerks International Protective Association affiliated with the American Federation of Labor, for the period this contract shall be in full force and effect; provided, however, that the Employer agrees to surrender said Union Store Card so loaned to him as aforesaid upon the expiration of this agreement, or upon demand made upon him by the Association, or upon violation of any provision or provisions of this agreement.

Section 41. This agreement shall be in full force and effect to and including the day of, 1940; and shall be renewed for the following year and from year to year thereafter unless either party shall give written notice to the other at least sixty (60) days prior to any day of during the life of this agreement of a desire to amend this agreement.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 14 continued)

If, after giving such notice and prior to the day of next ensuing, the parties shall fail to agree to such amendments, this agreement shall terminate at the expiration date; provided, however, that the parties may, by mutual written agreement, extend the agreement for the specified period beyond such expiration date for the continuance of negotiations; and provided, further, that after either party has given such sixty (60) days written notice of a desire to amend the agreement, either party may, not less than twenty (20) days prior to the expiration date, give to the other party written notice that it desires to terminate the agreement at the expiration date, in which event the agreement shall so terminate at such expiration date.

In Witness Whereof the parties have hereunto set their hands, in duplicate, by their respective officers or representatives thereunto duly authorized at the City of Portland, State of Oregon.

FOR THE UNION

.....
.....

FOR THE EMPLOYER

.....
.....

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 15

Airmail

Oakland, California

October 8, 1940

Personal

Mr. J. A. Barr

Law Department

Chicago, Illinois

Re: Retail Clerks Union, Portland, Oregon

Pursuant to our telephone conversation last Monday, I instructed Mr. Barth, the manager at Portland, to tell the Retail Clerks Union that we would accept their letter stating how many of the store's employees they claim to have. I told Mr. Barth we wanted the Union to state the actual number of their membership in the store, or the percentage. However, as you will see by the attached copy of a letter to Mr. Barth, the Retail Clerks have merely stated that they represent an overwhelming majority. Also you will note that the letter is signed not only by the Retail Clerks but the Office Employees Union. The Retail Clerks claim to have a majority but their internal organization will not allow them to bargain for the office workers, and, therefore, they have drawn in the Office Employees Union.

I see no objection to discussing one proposed agreement with the two Unions, and if you have any suggestions on this point I will be glad to get

(Testimony of John A. Barr.)

them. As the matter now stands we will probably meet with the representatives of these two Unions in Portland sometime next week. Incidentally, in our September 19 discussion at Portland the Retail Clerks were represented by a Mr. Landye, who stated he represented the Warehousemen's Union in the Mail Order certification hearing. He mentioned your name during the course of our discussion and I thought you might be interested to know he will probably attend our future discussions with the Retail Clerks.

I have a question which may arise in our discussions with various Union representatives here on the Coast. I anticipate that our objections to terms of a proposed contract will be met with the query "what counter proposal is the Company willing to make?" At present my reply to such a query would be that the Company is perfectly willing to discuss any proposals the Union has to offer at any time, and we have no counter proposal to offer. However, I am wondering if the Company may desire to give some other answer to this question, if and when it is raised.

W. B. P.

W. B. POWELL

Law Department

Ans. 10/11/40.

(Testimony of John A. Barr.)

Retail Clerks, Local Union No. 1257
ATwater 0171—404 Labor Temple
Portland, Oregon

October 2, 1940

Mr. E. L. Barth, Local Manager
Montgomery Ward & Company
2741 N. W. Vaughn Street
Portland, Oregon

Dear Sir:

As you know, the Retail Clerks Union, Local 1257, represents an overwhelming majority of your employees engaged in retail selling in your retail store in Portland, Oregon, also the Office Employees Union, No. 16821, represents a great majority of your office workers in the retail store.

This is to notify you that we are willing to negotiate a contract for the entire retail store. We are agreeable that the negotiations cover the office workers as well as the retail clerks, that one contract be signed covering the entire retail store, and that such contract will be negotiated by both unions involved at one time, and if an agreement can be

(Testimony of John A. Barr.)

reached it will be signed by both unions involved.

Yours very truly,

RETAIL CLERKS UNION

Local 1257

FRED DIXON,

Secretary

OFFICE EMPLOYEES UNION

Local 16821

HOWARD HICKS,

Secretary

FD:HH:JS

RESPONDENT'S EXHIBIT No. 16

Oakland, California

October 28, 1940

Mr. J. A. Barr

Law Department

Chicago, Illinois

Re: Warehousemen's Union—Portland

Attached is a copy of the proposed agreement submitted by Mr. Estabrook.

W. B. P.

W. B. POWELL

Law Department

WBP:RD

Enc.

Ans. 11/1/40

(Testimony of John A. Barr.)

Personal

Airmail

Oakland, California

October 28, 1940

Mr. O. W. Huddleston, Mgr.

Portland Mail Order House

Portland, Oregon

—6—

Personnel

Your letter of October 25 with copy of agreement has been received.

I will be in Nampa, Idaho, the balance of this week and I would suggest that, if the matter meets with your convenience, the meeting with Estabrook be arranged for Wednesday, November 6 or Thursday, November 7. Of course, we are not anxious to hurry up the meeting, but if Estabrook insists upon an early discussion of the agreement, either of the above two dates will be satisfactory.

W. B. POWELL

Law Department

WBP:RD

AGREEMENT

This agreement made and entered into this day of.....1940, by and between Montgomery Ward & Co., hereinafter called the Employer, and the Warehousemen's Union Local #206, I. B. of

(Testimony of John A. Barr.)

T. C. W. & H. of America, A. F. of L., hereinafter called the Union.

Article 1. The Employer agrees to recognize the Union as sole collective bargaining agency for the employes performing work in the classifications listed below in Article 4. of this agreement. No superintendent having authority from the Employer to hire or discharge men or women shall be a member of this Union.

Article 2. The Employer agrees to give preference of employment to unemployed members of the Union and in the event the Union is unable to furnish satisfactory help upon the request of the Employer he (the Employer) may employ a non-member of the Union provided such person makes application for membership in the Union within seven (7) days after taking employment.

Article 3. Section 1. Eight (8) hours within nine (9) consecutive hours shall constitute a day's work. Forty (40) hours consisting of eight (8) hours, Monday to Friday inclusive, constitutes a week's work.

Section 2. Straight time shall be any eight (8) consecutive hours from 8:00 a.m. to 6:00 p.m. Monday to Friday inclusive. All other time shall be at the overtime rate as established in Article 5 of this agreement.

Section 3. Any work performed on any of the following named holidays shall be at the overtime

(Testimony of John A. Barr.)

rate of time and one-half as established in Article 5. of this agreement;—Saturdays, Sundays, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day.

Article 4. The following shall be the minimum wages paid in their respective classifications:

STOCK ROOM

Stockman	\$35.00	per week
Assistant Stockman	32.50	" "
Stock Helper, Male.....	30.00	" "
Stock Order Filler, packer & checker.....	30.00	" "
Warehouseman	33.50	" "

SCHEDULE ACTIVITY

Heavy Pit Order Filler.....	\$32.50	per week
House Sale Order Filler "C" line.....	30.00	" "
House Sale Order Filler "A" line.....	28.50	" "
Order filler, checker, wrapper, women.....	25.00	" "
Packer, men	28.50	" "
Packer, women	25.00	" "
Correction clerks, men.....	32.50	" "
Correction clerks, women.....	27.50	" "
Production Control Clerk.....	30.00	" "
Outline Clerk	25.00	" "
Mailable Pit Order Filler & Part lot packer	30.00	" "

EXAMINATION

Examiner "C" line.....	\$35.00	per week
Assistant Examiner "C" line.....	32.50	" "
Examiner "A" & "B" line.....	27.50	" "
Stock preparation, women.....	25.00	" "
Stock preparation, men.....	28.50	" "

(Testimony of John A. Barr.)

PREFERRED ATTENTION ORDER UNITS

Completer	\$28.50	per	week
Packer	30.00	"	"
Biller	28.00	"	"
Preferred Attention Scaler.....	27.50	"	"

PACKING & BILLING

Sorter	\$22.50	per	week
Completer	27.50	"	"
Packers, men	30.00	"	"
Packers, women	27.50	"	"
Scalers, Multiple	22.50	"	"
Scale, single	25.00	"	"
Scalers, pit scaler.....	27.50	"	"
Billers, Multiple	26.00	"	"
Billers, Single	25.00	"	"
Billers, C. O. D. Biller.....	27.50	"	"
Error Correction Clerk.....	27.50	"	"
Diverted Order Clerk.....	27.50	"	"
Belt Inspector	22.50	"	"
Refund Control Clerk.....	25.00	"	"
Large Refund Control Clerk.....	25.00	"	"

SHIPPING & RECEIVING FLOOR

Shipping & Receiving Clerks.....	\$35.00	per	week
Checker	37.50	"	"
Ele. Opr. & Car unloading.....	32.50	"	"
Car Loaders	37.50	"	"

PACKAGE OPENING UNIT

Sign-up clerks, women.....	\$27.50	per	week
Sign-up clerks, men.....	32.50	"	"
Stock preparation girls.....	25.00	"	"

RETAIL CITY DELIVERY

Shipping clerks	\$35.00	per	week
Receiving Clerks	35.00	"	"
Checker	35.00	"	"

(Testimony of John A. Barr.)

BELT ROOM CUTTING UNIT

Stockman	\$35.00	per week
Assistant stockman	32.50	“ “
Pipe shop order filler & stockman.....	35.00	“ “
Porters	27.50	“ “
Technical Shade Cutter.....	35.00	“ “
Technical Asst. Shade Cutter.....	32.50	“ “
Linoleum Cutter	35.00	“ “
Crater	30.00	“ “
Tailoresses	26.50	“ “
Head Tailoresses	28.50	“ “

Any wages now being paid above the minimum provided for herein shall not be reduced for any cause. Adjustment of disputes or differences on classifications will be settled through the Board of Adjustment provided for in Article 13. of this agreement.

Article 5. The overtime rate of pay shall be time and one-half ($1\frac{1}{2}$). No trading of overtime for time off.

Article 6. In the event that the Employer does not at present employ a working foreman, forelady, supervisor, or instructor, it is agreed that if one is employed, he or she shall receive fifty (.50) cents a day above the rate of pay for the highest classification herein contained.

Article 7. If employes are worked over five (5) consecutive hours without a meal period, all time in excess of five (5) hours without such meal period shall be at the overtime rate. Meal periods shall be so arranged as not to interfere with the normal operation of the business.

(Testimony of John A. Barr.)

Article 8. Section 1. There shall be no discrimination against any employes for Union activity or membership.

Section 2. The employer shall have the right to discharge any employes for insubordination, drunkenness, incompetence or failure to perform work as required or to observe safety rules and regulations and the Employer's house rules, which shall be conspicuously posted. In the event any employee feels he or she has been discriminated against or unjustly discharged, he or she shall have a right to review his or her case by the Board of Adjustment, as set forth in Article 13 of this agreement. In the event the Board of Adjustment finds the discharge to have been unjustifiable, said Board shall order reinstatement of such employee with full payment of lost time.

Section 3. Where the employer requests an additional medical examination of an employee, and there is doubt in the mind of the employee as to the proper diagnosis of his or her case, the Union shall request a further examination by an impartial examiner, (to be paid by the Union). In the event both medical examiners do not agree in their findings it is further agreed that a third examiner shall be called for a final decision; said expense to be equally divided between the Employer and the Union, and the employee either returned to work with back pay or dismissed. New employees must

(Testimony of John A. Barr.)

have physical examination within thirty (30) days.

Article 9. Lay-offs: If the work becomes slack and the Employer deems it advisable to reduce forces, employees who have been employed less than six (6) months shall be layed off first. If after all the men or women who have been employed less than six (6) months have been layed off, the Employer considers it desireable to take further measures, further lay-offs shall be in accordance with the seniority of the various employees on each floor.

In rehiring, those employees layed off last will be rehired first, and no new employees will be hired until the list of former employees is exhausted.

Seniority at Montgomery Ward & Company's main store in Portland will be as follows: Employes now employed will have preference over employees transferred from other warehouses regardless of length of time employes at other warehouses might have with the Company. Any employees transferred from other warehouses to the main store must draw the scale provided in this agreement for extra employees. In case of lay-offs employes coming on from other warehouses will be the first to be layed off.

Article 11. Strikes: The Union agrees not to engage in any strikes or stoppage of work. The Employer agrees not to engage in any lockout. Any action of the employes leaving jobs for their own protection in cases of a legally declared strike by some Union directly working on the job, if said strike is sanctioned and approved by the Portland

(Testimony of John A. Barr.)

Central Labor Council, shall not constitute a violation of this clause of this agreement.

Article 10. Employers shall adhere to their past practice of granting vacations but in no case shall a vacation be less than one week with full pay each year.

Article 12. Any person receiving wages or conditions or periods of vacation in excess of the minimums set forth herein shall not have any such benefits taken away from them, because of the signing of this agreement. All holidays, when not worked, shall be paid for as an eight hour day. When holidays are worked, the rate of pay shall be time and one-half ($1\frac{1}{2}$).

Article 13. A Board of Adjustment is hereby created to be composed of two (2) representatives of each contracting party. Said Board shall organize at once and shall elect a Chairman and Secretary and shall have the power to adjust any differences that may arise between the parties hereto regarding the meaning or enforcement of this agreement. Said Board shall meet for consideration of all matters that may be referred to it, within forty-eight (48) hours subsequent to receipt by its Secretary by notice of same. The Board's decision shall be signed by a majority of the Board. If the Board cannot agree to any question referred to it within forty-eight (48) hours, they shall then choose a fifth member who shall have no connection with either contracting party and the decision of a majority of

(Testimony of John A. Barr.)

the Board of five shall be final and binding on both parties. Pending the decision of any question referred to the Board, work shall be continued in accordance with the provisions of this contract.

Article 14. This agreement shall go into effect this day of, 1940, and remain in effect until the day of 194....., and thereafter subject to thirty (30) days' notice of a desire to change by either party. If notice to desire to change or modify this agreement is served as hereinabove provided, negotiations shall start twenty (20) days from the date such notice is received.

In Witness Whereof, the parties hereto have caused these presents to be executed the day and year first hereinabove written.

MONTGOMERY WARD &
COMPANY

By
.....

WAREHOUSEMEN'S UNION
LOCAL #206

By
.....

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Trial Examiner Bokat: On the record. Proceed with cross examination.

(Testimony of John A. Barr.)

Cross Examination

Q. (By Mr. Landye) Mr. Barr, you are an attorney-at-law, as well as a labor relations director, is that correct? [506]

A. I am an attorney-at-law, yes, sir.

Q. You are admitted to practice in the state of Illinois, I imagine?

A. Yes; also the State of Indiana.

Q. Indiana. And you have worked for the company since 1937, is that correct?

A. Well, I have,—my connection with Montgomery Ward extends back of 1937.

Q. I see. And what were you doing before 1937?

A. I was first associated with Montgomery Ward in the spring of 1933 as an attorney.

Q. I see. And then you were with them, were you, continuously until 1937?

A. Not full time, no.

Q. I see. But 1937 you started in as a full time attorney, is that correct?

A. No, I did not. I have been serving full time with Montgomery Ward now since October of 1938.

Q. Of 1938? A. Yes, sir.

Q. And since 1940, you have been the head of the labor relations is that correct?

A. The handling of labor relations has been my definite responsibility since that time.

Q. What was that date in 1940? [507]

A. I said about September 1.

(Testimony of John A. Barr.)

Q. About September 1? A. Yes, sir.

Q. And you have considerable men working under you, I suppose? A. No, not so very many.

Q. Well, roughly, how many?

Mr. Ball: Do you refer to labor relations? Were you?

Mr. Landye: Just under labor relations, yes.

A. Oh, there are approximately ten people working under my supervision, but none of those folks are engaged solely in labor relations work.

Q. (Mr. Landye, continuing) I see. They are other attorneys?

A. That is right. They are all attorneys.

Q. The company policy as to labor relations, as related by you, who has laid down that policy?

A. Well, that is the policy of bargaining with employee representatives who represent the majority of the employees and the proper bargaining unit; is that what you refer to?

Q. No. You misunderstood me.

A. Well, that is the only policy that I recall testifying to.

Q. First, as to your entire attitude as you expressed it, as to the various provisions of contracts, who lays down the policy of the company? For instance, your attitude on——

A. (Interposing) Oh, I don't know as we have any policy as regards the various provisions of contracts. [508]

Q. Oh, you don't have a policy?

(Testimony of John A. Barr.)

A. Well, Mr. Examiner, I would have to ask for a clarification of the meaning of the word "policy" in order to answer that question.

Trial Examiner Bokart: You may do so.

Q. (Mr. Landye, continuing) The attitude that you express definitely as to what you consider a closed shop to be. Is that your attitude, or the attitude of the company, or both?

A. I would say that it is both.

Q. I see. Would you call that, then, a company policy?

A. No, I would call that a definition.

Q. I see. But it is definitely the attitude of the company, is that correct?

A. No, I would say that that is the manner in which we define the term "closed shop".

Q. I see. Now, is there a company policy in regard to seniority?

A. Oh, again, Mr. Examiner, I will have to ask for the meaning of the word "policy". I don't understand what the attorney is trying to get at.

Trial Examiner Bokart: If you don't understand the question, you may so state.

The Witness: I so state.

Mr. Ball: I suggest that you can simplify it by a definition of the practices.

Mr. Landye: Just a minute. [509]

Q. (Mr. Landye, continuing) Now, in Exhibit 10, you state this, signed by you: "With regard to

(Testimony of John A. Barr.)

Article 9, I would feel perfectly free to explain to the Union that the Company has no seniority policy in the sense that seniority is understood by the Union, and we do not propose to adopt such a policy. When pushed for a statement of your position on this subject, I have often stated that the company's policy is rather an intangible one, and difficult to reduce to words. However, it may be stated somewhat as follows: 'The Company will determine questions of lay-offs and rehiring on the basis of various factors which the Company considers properly pertinent to the appraisal of individual employees, including such factors as seniority, proficiency, adaptability, flexibility, promotability, ability, age, physical fitness, marital status.' " I fully agree with one union who has described the statement of the above as "What a mess of words."

Now, what I am asking you, Mr. Barr, is this: you have a quote in here of your letter, and it is: "As to the company policy, the company will determine the question of lay-offs and rehiring on the basis of various factors", and so forth, which I read to you. Whose quote is that?

A. That is mine.

Q. Well, this is a letter by you and a quote within a quote. I want to know where these quotes come from?

A. May I refresh my recollection by seeing that?

[510]

(Testimony of John A. Barr.)

Trial Examiner Bokat: Go ahead.

Mr. Landye: Yes, certainly; certainly.

(Whereupon the document referred to was handed to the witness.)

The Witness: The statement which you read which is included in quotation marks on page 2 of the exhibit 10 is merely what it says it is. It is preceded by the words, "However, it may be stated somewhat as follows", and then the statement follows in quotes,—that is, as I state how it may be stated.

Mr. Landye: I see.

The Witness: I was not quoting from any other document, or anything of that sort.

Q. (Mr. Landye, continuing) Oh. But you have stated in this letter what the company policy is as to seniority, in your own words. Now, I am asking you as to this company policy and seniority that you, yourself, call company policy in this letter.

A. Yes.

Q. From where did you derive that policy; that is what I am trying to find out.

A. From the management of the company.

Q. Now, in the management, what specific individuals do you mean?

A. The officers of the company.

Q. The Board of Directors? [511]

A. No, the officers.

Q. Mr. Avery? A. He is one of them.

(Testimony of John A. Barr.)

Q. Who else?

A. Principally that statement,—with reference to that statement, I would mean by the management, Mr. Avery, who was President, the vice-presidents of the company who are located in Chicago, the secretary and personnel director who are located in Chicago.

Q. Now, on company policy as stated in your seniority, and your attitude, we will call it to make it easier,—on union shop and the signing of agreements and that type of thing, your general labor relations, do you discuss that with the officers of the company?

A. Yes, sir; I have discussed it with them.

Q. You have discussed it with them?

A. Yes, sir.

Q. And their attitude is the same as you have expressed it on the stand, is that correct?

A. I feel that it is, yes.

Q. Well, is there any difference?

A. That is, I believe that on the stand I expressed their thinking on the subjects that I testified to.

Q. And this entire thinking or philosophy is the attitude of your company as far as the officers are concerned? [512]

A. To the best of my knowledge, it is, yes, sir.

Q. I see. Have you, yourself, had any hand in formulating this policy?

A. Oh, possibly to a very slight degree.

(Testimony of John A. Barr.)

Q. A slight degree? A. Yes, sir.

Q. In short, the policy is laid down by the officers and you take it, is that it? You take it, and execute it?

A. It is determined by the officers.

Q. You, of course, have had considerable experience in labor negotiations, isn't that correct?

A. I have had some experience. It would be a matter of experience as to whether it is considerable, I presume.

Q. Well, for how long a time?

A. Since the spring of 1937.

Q. Since the spring of 1937? A. Yes, sir.

Q. You have negotiated contracts, is that correct? A. Yes, sir.

Q. And participated in cases before the Labor Relations Board? A. Yes, sir.

Q. Both representation and unfair labor practices? A. Yes, sir.

Q. Now, your statement on what you termed the closed shop, that preferential hiring, or union shop and closed shop, all [513] were under the same thing as "closed shop",—is that your attitude or the attitude of the company?

Mr. Ball: I object. The witness has answered that the meaning of that word as we use it among ourselves is a definition and not an attitude.

Q. (Mr. Landye, continuing) Well, is that your definition? A. Yes, sir.

(Testimony of John A. Barr.)

Q. Or the definition of the company; I will change it.

A. I will say that it is both.

Q. It is both? A. Yes, sir.

Q. Have you ever read any books on labor relations?

A. I have read from books on labor relations.

Q. What ones?

A. Commons & Andrews; Commons, Watkins, Murray, I believe.

Trial Examiner Bokar: I don't believe the reporter knows how that is spelled.

Mr. Ball: Commons is C-o-m-m-o-n-s; Commons & Andrews is the first.

Q. (Mr. Landye, continuing) And Watkins, you have read that book?

A. I say I have read from those books. I wouldn't say that I have read all of any of them.

Q. That is the only ones that you have read?

A. Those are the only ones that I recall at this time on [514] that subject.

Q. And do you derive from any of those books your definition of the closed shop as you have stated from the stand?

A. I wouldn't say that it is derived directly from any of those books. However, they have contributed to it.

Q. And so that your statement is that in John R. Commons' books he defines the closed shop the way you define it?

(Testimony of John A. Barr.)

A. No, that is not my statement.

Mr. Ball: I think that is out of the path, to be quoting the witness.

Trial Examiner Bokat: I don't think that he so stated it. I will sustain the objection as to the form of the questions.

Mr. Landye: He has testified as an expert. I am just trying to find out a few things.

The Witness: Thank you.

Q. (Mr. Landye, continuing) Your statement as to your definition of what the closed shop was, did that come from any of those books?

A. Well, I recall, for example, that Watkins, in his text states that, strictly speaking, the term "closed shop" means a shop which is closed to union members; in other words, a shop which will not employ union people is, strictly speaking, a closed shop. However, in later years the term has been extended, as I understand it, to include shops where some requirement of union membership in some form is a necessary [515] factor in the employment of the individual.

There is, for example, the closed shop with the open union, and the closed shop with the closed union. In other words, "closed shop" is a term which is a broad term which embodies various forms of union membership requirements, some of which, as I understand it, are commonly referred to by some people as a union shop, as a preferential hir-

(Testimony of John A. Barr.)

ing hall, as a closed shop or some other such terminology.

Q. Now, this last part is your own idea, not from Mr. Watkins' book, is that correct?

A. Well, I don't purport to quote Watkins in any respect.

Q. I see.

Now, on the question of your attitude, as you call it, or statement on counter proposals, and how to bargain, your instructions to Mr. Powell, is this correct,—I want to get your correct.

A. And I want you to, too.

Q. Yes. That counter proposals should not be made in written form in answer to a union's proposals?

A. In the absence of some special circumstances which certainly did not exist in the Portland case, that is right.

Q. What would those special circumstances be?

A. There were no circumstances existing in the Portland situation, as I understand it, which would so qualify it.

Q. What would the special circumstances be?

[516]

Mr. Ball: I object to that as calling for a hypothetical situation of fact, and the answer to that wouldn't have any bearing on this case. I have hesitated to interpose objections to an examination which I think has gone rather far afield from the purport of the direct, but I think that they are

(Testimony of John A. Barr.)

getting into the field of rank hypothesis here, rather than confining ourselves to the issues.

Trial Examiner Bokat: Well, the answer is meaningless to me unless I understand what the witness means by "special circumstances." He might be able to illustrate it very clearly. I don't know whether it is going to help me to determine whether or not this respondent failed to bargain collectively or not. Maybe it won't. I realize that some of this discussion is theoretical, but it was brought out mainly on cross examination. But I hesitate to limit Mr. Landye in his examination.

Would you read the question back, Mr. Reporter?

(Whereupon the question referred to was read as follows:

"Q. (Mr. Landye) What would the special circumstances be?")

Mr. Ball: I object to this question until it is shown that the witness had in the testimony in chief specific situations in mind at that time, by the use of the words "special circumstances."

Trial Examiner Bokat: I am merely asking him to illustrate what he means by "special circumstances". He has used the [517] definition,—I have not.

The Witness: I wouldn't say that in no case should a written counter proposal be made in the bargaining process. Now, just what the circumstance might be, that would call for a counter proposal,

(Testimony of John A. Barr.)

might depend upon a lot of things. I don't feel that I can answer that question of just what specific circumstances would arise that in my opinion would make a counter proposal advisable or necessary.

Q. (Mr. Landye, continuing) I see. So, to make it short, none of those special circumstances have ever arisen, as far as you are concerned?

A. Well, I would say that in no bargaining in which I have had any connection, have I felt that it was advisable, and certainly not necessary to make a written counter proposal when the parties were as far apart in the matters being bargained, as the parties were in Portland in the instances under discussion.

Q. Have you ever made a written counter proposal?

A. As I understand a counter proposal, no. And it is hard for me to conceive,—if not impossible for me to conceive, of any circumstances where such a written counter proposal would be advisable or necessary, but as I stated before, I hesitate to say that one should never be made, because something which I cannot foresee might be present in some bargaining which would make it the proper thing to do. But that is such a remote [518] possibility that, as I stated before, I can't conceive of what it would be.

Mr. Landye: I make a motion to strike the whole last part of the answer as not responsive. I asked him the question of whether he ever made a counter proposal.

(Testimony of John A. Barr.)

Mr. Ball: I move to interpose this objection to the question because the direct testimony of this witness was what was a counter proposal depended upon the whim of the labeller, if he wanted to call something a counter proposal. And I think that the witness' answer presupposes a particular definition which might be identical with that of the questioner.

Trial Examiner Bokat: I will overrule the motion and the objection, and let the answer stand as given.

The Witness: Now, in further explanation of that answer, if I may complete my answer,—I have on many occasions made a full statement of and full disclosure of the company's position on some point being bargained, or upon some demand made by a union and it may be that that statement of the company's position, which after all is about all that can be said on the subject, is a counter proposal. That depends upon one's individual definition of a counter proposal. I don't consider it as such.

Q. (Mr. Landye, continuing) Well, let's clear this up. Have you ever taken a contract, or taken a piece of paper, now, and written down on it, section by section, a proposal to a union in [519] answer to a proposal of theirs as to what the company would accept, section by section, and submitted it to a union?

A. Well, I have sat down with a piece of paper and written a contract with a labor organization, if that answers your question.

(Testimony of John A. Barr.)

Q. I will ask if you ever submitted to a labor organization, section by section, what the company would consider in the case?

A. Well, I said that I had written a contract with a labor organization, which, of course, was signed and executed by the Union. It had to be submitted to them.

Q. Was that later signed by the Union?

A. Oh, yes; yes.

Q. I see. What union was that?

A. Well, that was an A F of L affiliate. I believe they called themselves a Machinists' Union, or the International Association of Machinists, associated with the American Federation of Labor.

Q. Have you signed contracts with any unions in the mail order or retail stores in the United States?

A. Well, this particular contract that I just referred to was in a factory operated by the company. I know of no written contracts that are in existence at a retail store or mail order house.

Q. Yes. So, to clear that up, throughout the United States [520] Montgomery Ward does not have any contract with any union representing either the Retail Store Employees or the Mail Order Employees?

Mr. Ball: Well, come now,—that is not a fair statement of the witness' testimony, and it involves a conclusion and opinion of the questioner, and for that reason, I object to it.

(Testimony of John A. Barr.)

Trial Examiner Bokat: Well, I think his answer is clear.

Mr. Landye: I think that is correct.

Q. (Mr. Landye, continuing) Now, as stated in your direct examination, that you instructed Mr. Powell to never agree on one section at a time, is that correct?

A. As an agreement, yes, sir.

Q. As an agreement?

A. Yes; a trade agreement can only be agreed to as an entirety, as I said.

Q. And so, for instance,—you have a Mr. Barth?

A. Yes.

Q. To be specific, on what is the title of Board's Exhibit 3, where appears 14 different sections, your instructions were never to agree section by section, is that correct?

Mr. Ball: Oh, I object to this as not being a fair statement of the witness' testimony. The witness' testimony was that they couldn't take out isolated paragraphs or sections of a contract to make a final agreement embodying only the single section. I think that the witness' testimony is clear on that, and that it is a misquotation here in framing the question as it is. [521]

Mr. Landye: I so understood it, and I wish to have that cleared up.

Trial Examiner Bokat: The witness can state in reply to the question whether that is,—Mr.

(Testimony of John A. Barr.)

Landye's understanding of it is correct or not. Do you want to hear the question again?

The Witness: I have stated to Mr. Powell that a good bargainer would not bind himself by agreement to any one section or clause of a contract while other sections and clauses,—as to other sections and clauses, there still remained substantial disagreement. That is, to agree to one section, while there existed substantial disagreement as to other was not smart bargaining, in my opinion.

Q. (Mr. Landye) So that the whole contract would just have to be agreed to at one time?

A. So far as an agreement is concerned, yes, sir.

Q. It would all just have to be agreed to at one time, is that correct?

A. So far as an agreement is concerned, yes. Of course, the separate sections and clauses could be negotiated and bargained separately, but they could only be agreed to as an entirety.

The reason for that, I think, is obvious because of some change that might be made in one of the other proposals in the contract, the bargainer might desire to make some change in the specific clause under discussion, the later objection not being [522] apparent at the time because the change to be made later in the other provision would, of course, not then be known.

Q. Now, you say Mr. Powell was in charge of labor relations here on the Pacific Coast, is that correct?

A. Yes, sir.

(Testimony of John A. Barr.)

Q. I want to get to the authority. Did Mr. Powell have the authority to grant any increases in wages?

A. No, not alone.

Q. Not alone? A. No, sir.

Q. Would Mr. Powell, in fact, have any authority to change any of the existing conditions, as they existed at the time at the plant, by himself,—such as wages, hours, conditions and everything?

Mr. Ball: I object to this question because the statement is simply,—or the claim has simply been made that Mr. Powell is empowered to negotiate and not to administer to the house and dictate any changes in hours.

Trial Examiner Bokat: You may answer the question.

The Witness: Will you read the question again, please?

(Last question read.)

A. By himself, no, he would not.

Mr. Landye: He would not.

Q. (Mr. Landye, continuing) Now, you stated on the witness stand, as I recall, that your attitude or own position was that [523] the mail order should be dealt with as one unit and the retail stores as another unit, with the union, is that correct?

A. Yes. That is substantially correct.

Q. And that is correct as of today, is that right?

A. That is right.

Q. Then you have not changed your mind since the Labor Board ruled last August that that was not a correct policy

(Testimony of John A. Barr.)

A. I have not changed my mind since last August.

Q. You have not? A. No, sir.

Q. I see.

A. I am not at all sure that the Labor Board ruled that that was not a correct policy.

Q. But you have not changed your mind as to that policy since 1940? A. No, not at all.

Q. I see. Now, with reference to Respondent's Exhibits 11 and 12,—have you read these ads? I will take one and you take the other. They are both the same. (Mr. Landye handed a newspaper sheet to the witness)

A. Yes, sir; I have read them.

Q. (Mr. Landye) Do you know who drafted those statements, as appear in Exhibits 11 and 12 of the Respondent? A. Yes, sir.

Q. Who did? [524]

A. I made the final draft.

Q. You made the final draft? A. Yes, sir.

Q. And these were made March 22, 1941, and one states this: "Ward's Portland Store and Mail Order House were picketed December 7, 1940. This was the result of Ward's refusal to agree to a closed shop. No dispute existed as to wages and hours".

A. Yes, sir.

Q. That is your statement?

A. Yes, it is.

Q. I see. And you drafted a statement like that, knowing what went on in the negotiations?

(Testimony of John A. Barr.)

A. Well, I drafted the statement, and I feel that I have a rather general knowledge of what went on in the negotiations, yes, sir; although I was not personally present.

Q. Well, did you know that there was a dispute over wages and hours?

A. No, sir; I know that,—at least it is my knowledge that on November 25, 1940, at a meeting in Oakland, a Mr. White, a Mr. Thomas White, made the statement to Mr. Powell, I am informed, that unless the company would agree to a closed shop at Portland, Oregon, on or before noon of Thursday, November 28, that the unions for which he spoke would take concerted economic action against Montgomery Ward in the eleven western [525] states.

Montgomery Ward, as stated in the ad, failed to agree to the closed shop as demanded by Mr. Thomas White, and a few days later, the picket line was placed around the Portland store and house as stated in the ad.

Mr. White—

Q. (Interposing) Now,—excuse me. You are still explaining your answer?

A. Yes, I am.

Mr. White, a few days after that, told me personally, in a conversation in Oakland, California, that he was still then speaking with full authority for the Warehouse and Retail Clerks' Locals at Portland, as well as the Warehousemen and Retail Clerks' Unions at Oakland, and he said to me, "We

(Testimony of John A. Barr.)

have no dispute with you over either wages or hours."

Q. Now, you were in touch, were you not, with Mr. Powell, all of this time?

A. I was in frequent contact with Mr. Powell.

Q. Yes. Didn't you know that at the meetings of December 14 and 16, that the parties could not agree on wages?

A. Well, whether I knew that or not, the ads as you will note, state that the house was picketed on December 7th, which antedates the time referred to by you in your question and state that no dispute existed as to wages or hours at that time. It is my understanding that since the date on which the house was picketed, [526] that certain demands have been made as to wages, yes, sir.

Q. Well, didn't you know that before the place was picketed that there were wage demands made on the company?

A. Well, as I just stated to you a moment ago, Mr. White, within two or three days after December 7th, the date we are talking about here, stated to me personally, on behalf of the Warehouse and Retail Clerks' Unions of Portland, that no dispute existed as to wages or hours.

And he said to me, "We are not making any claims on you with regard to either wages or hours."

Mr. Landye: I make a motion to strike the whole answer as not responsive.

(Testimony of John A. Barr.)

Trial Examiner Bokat: It is partially responsive and not entirely.

Mr. Reporter, will you read the question, please?

(Whereupon the question referred to was read as follows:

“Q. (Mr. Landye) Well, didn't you know that before the place was picketed that there were wage demands made on the company?”)

Trial Examiner Bokat: That is prior to December 7, 1940; did you know that?

Q. (Mr. Landye, continuing) Did you know that wage demands had been made on the company?

A. I understood that certain contracts had been submitted to the company. I believe they have been identified here as Board's [527] exhibits 3 and 7, and that those contracts made some reference to wages.

Q. In fact, in your letter to Mr. Powell on November 1, you referred to those wage sections, didn't you?

A. The letter will speak for itself.

Q. Yes. Now, was there any other correspondence between Mr. Powell and yourself, except what we have here in evidence.

A. I believe there was; yes, sir.

Q. Do you have that?

Mr. Ball: Well, I object to this. The question of whether he has this correspondence has nothing to do with the issues in this case.

(Testimony of John A. Barr.)

Trial Examiner Bokat: He just asked whether he has any.

Q. (Mr. Landye, continuing) Do you have any other correspondence with Mr. Powell, or Mr. Powell with you, in respect to the situation with the labor unions with Montgomery Ward at Portland, and instructions by you to him or requests for instructions by him to you?

A. Well, that question involves several things.

Mr. Ball: Yes. I move that the question be separated and put in proper form.

Trial Examiner Bokat: Yes.

Q. (Mr. Landye) Do you have in your possession any letters besides what are in evidence between you and Mr. Powell, relating to the labor situation here in Portland? [528]

A. I have some letters,—pardon me.

Mr. Ball: I object to the question unless it is made specific as to what dates.

Mr. Landye: No, if the Court please.

Trial Examiner Bokat: The question is general. I think that it is clear, involving the labor dispute here. I assume there was a dispute here. If the witness doesn't understand it, he can so indicate.

The Witness: I didn't say that.

Trial Examiner Bokat: No, you did not. I say, if you don't understand it, you can so indicate. I think that it is clear, and I will let it stand.

The Witness: Shall I answer it?

(Testimony of John A. Barr.)

Trial Examiner Bokat: Yes.

A. I have some letters from Mr. Powell with regard to these matters.

Q. (Mr. Landye) I see. Could you produce those here? A. Physically?

Q. Yes. A. Yes.

Q. I ask that that may be done. I don't ask that he be here to identify them.

Mr. Ball: Well, the respondent objects to the production of these letters as being the privileged correspondence of the respondent.

Trial Examiner Bokat: Well, I am afraid that you have [529] opened the door. You have come in here and produced certain letters involving certain instructions which you felt were not confidential. Now, you take the position that certain other letters involving the same dispute are confidential. It may be that they are. I don't know whether it will help throw any light on the situation to help me determine the facts or not, Mr. Ball.

Mr. Ball: Well, the request made is a general one.

Trial Examiner Bokat: I have not directed you to produce them. I am sort of thinking out loud.

Mr. Ball: Well, may I direct your attention, Mr. Examiner, that this request is a broad one. There might have been many letters that passed between Mr. Barr and Mr. Powell which do not relate to the same matter, but which have the same probative effect as the letters which are produced.

(Testimony of John A. Barr.)

Trial Examiner Bokat: That may be true. I don't know what has passed between the parties.

Mr. Ball: The request for the production is very sweeping, and totally without justification, and no foundation laid.

Trial Examiner Bokat: I think there has been a foundation laid in a general way. The witness has admitted that other letters, requests for instructions, I believe, were received by him from Mr. Powell. Am I correct in that, Mr. Barr?

The Witness: I said other letters were received. I didn't interpret them as being requests for instructions or otherwise. [530]

Trial Examiner Bokat: Well, Suppose you develop that a little further, Mr. Landye? You can make your request more specific if you lay a foundation for it.

Mr. Landye: Yes.

Q. (Mr. Landye, continuing) Do you have in your possession any other letters relating to the general labor dispute here in Portland with Montgomery Ward in which you instruct Mr. Powell as to how he should go about the negotiations?

A. No, I have no letters in my possession in which I give any instructions to Mr. Powell.

Q. Do you have in your possession any letters from Mr. Powell to you?

A. The only letters I have in my possession would be from Mr. Powell to me.

(Testimony of John A. Barr.)

Q. Yes. Well, do you have some of those requesting instructions and advice?

A. I believe not, to the best of my recollection. Mr. Powell, I think, knew that any instructions or advice that I had would be forthcoming without his requesting it.

Q. I see. Well, do you have in your possession any letters from Mr. Powell to yourself in the nature of reports upon the Montgomery Ward situation here in Portland, the labor dispute?

A. Yes, I do have.

Mr. Landye: May I ask that those be produced?

Mr. Ball: I renew our objections to the production of those [531] reports, for the reasons that I have urged before, that they relate to a different matter, and there has been no waiver of any privilege as to the production of such documents here.

Trial Examiner Bokat: Suppose you continue. I want to think about the request. I will reserve decision on it in the meantime. You may continue with your cross examination.

Mr. Landye: May I make a statement before you consider that?

Trial Examiner Bokat: Yes.

Mr. Landye: Our purpose in that, if the Examiner please, is this: that certain letters were brought in, to which I objected at the time as hearsay; but they were in, nevertheless, setting out for the purpose of showing instructions, as they stated, to the general attitude and mind, as they call

(Testimony of John A. Barr.)

it, of the Company. That is the way they got around the hearsay rule.

Therefore, I am merely asking for the rest of the letters to develop the whole thing. I don't want just a few selected letters. I want to look at the whole picture. And I am going under the rule that when one letter is put in such as this, you have to bring them all in. I object to——

Trial Examiner Bokat: (Interposing) I think there is a great deal of merit to the request, but I will still think about it.

The Witness: Of course, if I may make a statement in explanation of the facts, Mr. Examiner?

[532]

Trial Examiner Bokat: Yes, I would like to get it as fully as possible.

The Witness: I would like to say, with regard to laying the full picture on the table, that the full picture goes far beyond the letters, because by far most of my contacts with Mr. Powell were oral.

Trial Examiner Bokat: Oh, yes. I think that we understand that all right.

Mr. Ball: And therefore subject to examination.

Trial Examiner Bokat: Yes.

Mr. Landye: Now,——

Trial Examiner Bokat: I think that Mr. Landye's point, though, is still a good one,—that if the respondent seeks to select certain correspondence to put in evidence, other correspondence dealing with the same subject, particularly where objection

(Testimony of John A. Barr.)

is made to the introduction originally, and then a request is made for the introduction of the balance on the same subject. It sounds fair and equitable to me, without trying to be too technical about it.

Q. (Mr. Landye, continuing) Now, you stated in direct examination that your attitude, or policy, or whatever it was, was,—on grievances, you stated, I remember specifically, was to deal with union and non-union employees and grievances of the same, is that correct?

A. Well, I said that the management of the company was at all [533] times glad to receive and consider the grievance of any individual employee, or any group of employees, and that when any grievance was presented to the management, that it would be considered, and, if found to be justified, corrective action would be immediately taken, and that that corrective action would be taken regardless of whether the grievance involved a member of a labor organization or a non-member of a labor organization.

Q. I see. Now, I just wanted to get that straight.

That attitude on grievances, would your attitude be to also deal with a union grievance committee?

A. Well, I would say that it would be proper to deal with the union grievance committee if the union represented the majority of the employees of the unit involved. I would say that it would not be proper to deal with such a committee if the union

(Testimony of John A. Barr.)

represented but a minority of the employees in the unit of the union involved.

Q. Now, do I understand this correctly,—that the Company will deal with a union that is certified by the National Labor Relations Board, is that correct?

A. I don't understand the question, Mr. Examiner. I don't know what is meant by the word "deal".

Q. Well, they will negotiate, then?

A. Oh, yes, certainly.

Q. And you will not deal with any,—do I take it, then, that [534] you will not deal with any other union that is not certified by the National Labor Relations Board? A. I didn't say that.

Q. Well, is that correct? A. No.

Q. I see.

A. I said that we would deal with any union which represents a majority of the employees in a proper bargaining unit. Certification by the National Labor Relations Board is a very satisfactory manner of establishing such majority representation but not the only manner, probably.

Q. I see. Now, these attitudes that you have expressed here, have full, I think,—strike the question.

Trial Examiner Bokst: I will declare a ten-minute recess at this time.

(Whereupon, at this time there was a short recess, after which proceedings were resumed as follows:)

(Testimony of John A. Barr.)

Trial Examiner Bokat: The hearing will come to order, please.

Q. (Mr. Landye, continuing) Referring to Exhibit,—Respondent's Exhibit 16, Mr. Barr, and showing you now the contract attached, I see some pencilled notes. Do you know whose notes those are?

A. Yes, I do.

Q. Whose notes are those?

A. They are mine. [535]

Q. Those are your notes?

A. Yes, I used the contract attached to Respondent's Exhibit 16 as my office copy of the Warehousemen's Contract.

Q. And the pencilled notes, then, which are attached to Exhibit 16,—the pencilled notes showing on what is headed "agreement", which will be about the third page, they are all of yours, are they?

A. They are, yes, sir.

Mr. Ball: Perhaps I haven't thoroughly familiarized myself with that. (Reading exhibit)

I didn't know that you wanted to encumber the record with that.

Mr. Landye: Oh, I wanted it encumbered that way.

Mr. Ball: O. K. That is fine.

Q. (Mr. Landye) Now, just one more question. Referring to Exhibit,—Respondent's Exhibit 14, will you tell me whose pencilled notes appear there on the second page?

A. Yes, those are also my notes.

(Testimony of John A. Barr.)

The form of contract attached to Respondent's Exhibit 14 I use as my office working copy of the Retail Clerks' submitted contract.

Q. I see. You are familiar, I assume, with all of these statements made as to what Mr. Powell would agree with in those negotiations?

A. You mean statement made by Mr. Powell in the negotiations? [536]

Q. Yes.

A. Oh, as I was not personally present, I only know what has been reported to me.

Q. I see. Well, taken from your own viewpoint, have you ever made any concessions to a union, or proposals to a union except that which was actually in effect at Montgomery Ward at that time?

Mr. Ball: I object to that as not having any relevance to the issues in this case, and it involves the use of a word that, in itself, is ambiguous. It doesn't tend to prove or disprove any issue in this case.

Trial Examiner Bokat: If the question is clear to the witness, I will let it stand.

Read the question, Mr. Reporter, please.

(Whereupon the last question was read.)

Trial Examiner Bokat: May I just add to that: I assume that you are limiting the question to the negotiations in controversy here?

Mr. Landye: Yes, that is correct.

Trial Examiner Bokat: To the Portland situation?

(Testimony of John A. Barr.)

Mr. Landye: Yes, yes.

Trial Examiner Bokat: Is that question clear to you?

The Witness: No, it is not clear to me. I thought that it was before you said that, but now I don't believe it is.

Mr. Ball: Mr. Barr has not participated in these negotia- [537] tions except the one matter that he has testified to.

Trial Examiner Bokat: I know that he has not participated and I merely assumed that the question assumed the knowledge of his situation from the reports he received from Mr. Powell and the advice that he gave to Mr. Powell and the position taken by the company.

Mr. Ball: May we have the question read again, because I understood the question——

Trial Examiner Bokat: (Interposing) I understand that Mr. Landye is willing to reframe it, in any event.

The Witness: I think that I can answer the question.

Trial Examiner Bokat: Do you think that you can?

The Witness: Yes.

Mr. Landye: All right.

A. I have on many occasions made changes in the wage scale and working conditions as the result of union negotiations. I don't recall that any

(Testimony of John A. Barr.)

such changes were made in Portland, however, as a result of these particular negotiations.

Mr. Landye: That isn't in answer to the question.

Trial Examiner Bokat: The question was general.

Mr. Landye: Yes, but we are limiting it to Portland.

Trial Examiner Bokat: That is what I asked you.

Mr. Landye: I thought that I did indicate that I wanted it limited to Portland.

Trial Examiner Bokat: Well, suppose you ask another [538] question?

Mr. Landye: Well, we will see if we can get at it another way and make it a little more clear.

Q. (Mr. Landye, continuing) Did you either instruct Mr. Powell, or—yes, instruct Mr. Powell to make any concessions to the Union over and above what they were already getting here in Portland?

Mr. Ball: I object to it as the question of whether he instructed him to make concessions in general has no tendency to prove or disprove any element of this case, and the question of whether or not the various sections of the contract did, in fact change existing practices more favorably to the employees is a question that should be shown with reference to the particular discussions already in evidence.

Trial Examiner Bokat: Do you want to specify your question or particularize it more definitely?

(Testimony of John A. Barr.)

Mr. Landye: Yes.

Either concessions as to either wages, hours or working conditions.

Mr. Ball: Now, just a minute on that. I object to the question because there is testimony by Mr. Langford, for example, that there were a number of clauses which were agreeable, and as a matter of fact some of those represented changes of practice, and I think that the testimony so shows.

Mr. Landye: That is not my recollection of the testimony. [539]

Trial Examiner Bokst: It isn't mine. I mean, I don't know whether that is a fact or not. If it was, I would like to know it. Frankly, my impression has been that the clauses to which the company agreed were some slight modification in relation to those practices or conditions then existing or existing in the company prior to the strike here at Portland. If I am wrong in that impression, I wish that you would set me right.

Mr. Ball: I know right off-hand, and I think that the evidence shows, for example, that there was a tentative agreement expressed by Mr. Powell to the furnishing of *union* forms to the employees in one of these sections which was not the practice.

Trial Examiner Bokst: Well, if the record doesn't show whether the company had done that in the past, there would be no deviation.

I don't know from the record, as established now, whether the company had furnished uniforms in the past, or whether this was a new policy being

(Testimony of John A. Barr.)

embarked upon. I think the record should show that. I am totally in the dark, frankly.

Suppose you go ahead?

Mr. Landye: That is what I was trying to get at.

Trial Examiner Bokat: I know it. That is why I am permitting you to go ahead.

Mr. Landye: Yes. [540]

The Witness: Shall I answer?

Trial Examiner Bokat: Yes.

A. May I have the question read?

Trial Examiner Bokat: Mr. Reporter, will you read the question?

(Whereupon the question referred to was read as follows:

“Q. (Mr. Landye) Did you either instruct Mr. Powell, or,—yes, instruct Mr. Powell to make any concessions to the Union over and above what they were already getting here in Portland?”)

A. I never instructed Mr. Powell that he should make such concessions, or that he should not make such concessions.

Q. (Mr. Landye, continuing) I see. That matter was left entirely up to Mr. Powell?

A. It was left up to Mr. Powell and the other people with whom he was working, here in Portland.

Trial Examiner Bokat: Do you mean by that answer that Mr. Powell did have authority to make—let’s use the word “concessions” or—I am

(Testimony of John A. Barr.)

satisfied with that word,—to make concessions beyond that which was already then in existence in Portland?

A. Well, what do you mean by concessions? Do you mean to make some change?

Trial Examiner Bokat: Well, you answered the question. Yes, that is what I mean. [541]

The Witness: I said that I gave Mr. Powell no instructions that he should not grant concessions or that he should grant them, either way.

Trial Examiner Bokat: I know. You have testified that he had full power to negotiate?

The Witness: That is right, full power to negotiate. And I also testified that he had no authority himself to change the hours, the wages or the working conditions in Portland.

Q. (Trial Examiner Bokat) But frankly, what puzzles me,—was he merely to listen to the union demands? A. Oh, no.

Q. And then forward them to you? Now, what does the word “negotiate” mean in this instance?

A. You see, Mr. Powell was not working on this matter alone.

Q. Yes, you had Mr. Huddleston here?

A. Mr. Huddleston. Mr. Barth was here, the manager of the retail store. Mr. Barth was working very closely with Mr. Harris, the vice-president of the company located in Oakland who had jurisdiction over all of the stores in question, and with Mr. Harris' staff in Oakland.

(Testimony of John A. Barr.)

Q. I assumed,—

A. (Interposing) Does that make it clear?

Q. Yes, I knew that they didn't have the power necessarily to bind the company without previous authorization to make any kind [542]

Mr. Ball: May I submit to your Honor that the record shows that Mr. Huddleston was the manager of the mail order house, and Mr. Barth of the retail store, and had the usual authority of such men to change conditions.

Trial Examiner Bokst: Well, if he did, I think that the record ought to show it. I don't,—I didn't get that impression, I mean the questions that have been directed as to Mr. Powell's authority.

Now, if Mr. Barth and Mr. Huddleston had more power than Mr. Powell in regard to negotiating or making any changes, I think that the record should show that.

The Witness: I testified, Mr. Examiner, if I may restate, that at the time Mr. Estabrook called upon me in Chicago, he was speaking in behalf of the Warehousemen's Union, all or at least practically all of whom were employed in the mail order house. I told him that Mr. Powell and Mr. Huddleston had full authority to negotiate with them.

Mr. Ball: Mr. Examiner, may I suggest that part of the difficulty comes from the ambiguity of the negotiations. Mr. Powell was in charge of the negotiations and that has been the testimony and the direction of the inquiry all through it.

(Testimony of John A. Barr.)

Trial Examiner Bokar: I know; it has all been directed towards Mr. Powell and that is why I asked these questions, bringing in Mr. Barth and to bring in Mr. Huddleston.

The Witness: Mr. Powell would have to consult with Mr. [543] Barth and Mr. Huddleston before a change would actually be made in the working conditions because they were the managers of the store and they were responsible for its operations.

Mr. Landye: May I get this correctly now: that Mr. Barth and Mr. Powell and Mr. Huddleston had the power, for instance to up the wages 10 per cent.?

The Witness: Yes, they did.

Q. (Mr. Landye, continuing) They had that power? A. Yes, sir.

Q. And did they have the power to grant a union shop?

A. I would say "yes", that is my opinion, that they had that authority. And I say that that is my opinion that they had the authority to do that, having in mind that they had been instructed at the time of these negotiations that the company was opposed to the closed shop which had been asked for by the union. In the absence of any contrary instructions, why, they would have authority to so agree.

Q. So, your statement is that Mr. Huddleston and Mr. Barth and Mr. Powell, together, could grant the union shop.

(Testimony of John A. Barr.)

I want to ask you, then, and refresh your memory from a letter that you wrote to Mr. Powell on November 1, quoting from paragraph 3: "The preferential hiring and the union shop provisions of article 2 are not acceptable on matters such as this where our objection is to the substance of the proposal rather than to the form in which it is presented or with respect [544] to some detail it seems to use, there is no obligation upon us to make a counter proposal. In other words, there is nothing in the nature of a union shop or preferential shop which is acceptable to us which would possibly form the basis of any kind of a proposal."

And with that letter to Mr. Powell, would you say that he and Mr. Huddleston and Mr. Barth had the power to grant a union shop here in Portland?

A. No; I said in the absence of any instructions to the contrary, they would have the authority to negotiate. However, in this particular instance, they did have instructions to the contrary.

Q. So they wouldn't have the authority, is that correct? A. Yes.

Trial Examiner Bokar: May I ask, Mr. Barr, whether these instructions you sent to Mr. Powell, —I believe the word "instructions" was used by your own counsel on direct examination. If I am wrong, will you correct me, Mr. Ball?

Mr. Ball: Yes; I said that those instructions were given to him.

Trial Examiner Bokar: Now, were those in-

(Testimony of John A. Barr.)

structions, given to Mr. Powell, given in these negotiations just as binding on Mr. Barth and Mr. Huddleston as on Mr. Powell?

The Witness: I so considered them.

Trial Examiner Bokat: All right. [545]

Mr. Ball: Your Honor, this is making it somewhat obscure.

The wage policy was discussed, and that wage discussion included both the authority and the power to make the wage adjustments.

Trial Examiner Bokat: That is right.

Mr. Landye: I think that is all.

Trial Examiner Bokat: Any redirect?

Mr. Ball: Are you going to make a ruling on those documents?

Trial Examiner Bokat: Do you wish to introduce them without the direction of the Trial Examiner? Do you want to consider that?

Mr. Ball: I think not.

Trial Examiner Bokat: You think not. Frankly, I want to give it some more thought.

Mr. Ball: My only point in raising the question now is that if the Examiner is going to rule, that they be produced.

Trial Examiner Bokat: You want time to produce them while Mr. Barr is here?

Mr. Ball: I thought it might serve the purposes of this examination.

Trial Examiner Bokat: I might discuss it with the parties off the record in order to discuss cer-

(Testimony of John A. Barr.)

tain things in regard to that procedure. If you want to leave it on the record, I will discuss it on the record.

Mr. Ball: Oh, that is perfectly all right. [546]

Trial Examiner Bokat: I will declare a recess at this time.

(Whereupon, at this time there was a short recess, after which proceedings were resumed as follows:)

Trial Examiner Bokat: The hearing is now in session. May I state for the record, gentlemen, in the discussion we had in the chambers, the Respondent, after that discussion, or during that discussion, through its counsel, has indicated its willingness to produce other letters that Mr. Barr wrote to Mr. Powell concerning the meetings which took place on the 13th, 14th and 16th of December.

Mr. Ball: No, Mr. Barr wrote to Mr. Powell prior to December 16; and that Mr. Powell wrote to Mr. Barr reporting the meetings of November 12, November 25, December 13, 14 and 16.

Trial Examiner Bokat: That you are willing to produce that correspondence.

Mr. Ball: These are being produced.

Trial Examiner Bokat: I understand that they may be received in evidence without further identification .

Mr. Landye: That is correct.

Trial Examiner Bokat: Mr. Reporter, will you

(Testimony of John A. Barr.)

mark them in order and they will be received as Respondent's Exhibits 17 to 23, inclusive.

(Whereupon the documents hereinabove referred to were received in evidence as Respondent's Exhibits 17 to 23, inclusive.) [547]

RESPONDENT'S EXHIBIT No. 17

Air Mail

Chicago, Illinois

September 24, 1940

Mr. W. B. Powell

Law Department

Oakland, Cal.

Re: Warehousemen's Union—Portland

Mr. Estabrooks, representative of the Warehousemen's Union in Portland dropped in to see us yesterday on his way through Chicago. He is the representative of the Warehousemen's Union which has been certified by the Labor Board as bargaining representative for the warehousemen's group at the Portland house and store. We told Estabrooks that the Portland bargaining would be handled by Mr. Huddleston and you. Huddleston will contact you when called upon by the Union and arrange a time of meeting which is mutually convenient. I think that you should attend all meetings which are held with the Warehousemen's Union and you will probably carry the burden of the negotiations. I am sure that Huddleston will welcome your assistance.

(Testimony of John A. Barr.)

You will of course keep us advised of all developments and feel perfectly free to call upon us for suggestions on any point where the answer is not clear.

JOHN A. BARR

JAB/s

RESPONDENT'S EXHIBIT No. 18

Chicago

Nov. 22, 1940

Mr. W. B. Powell
Secretary's Office
Oakland, California

After discussing with Mr. Ball his letter to you of November 19 we thought it might be well to further clarify one or two of the points, particularly the subject of counterproposals.

To date, we have had no situation where we have sought a contract with a union. Therefore, by the very nature of the situation, the initiative lies with the union. We propose to fulfill our obligation to bargain with the unions in good faith, but this does not pass to us "the burden of going forward". The initiative continues to lie with the union throughout the bargaining process. The only thing which will change our status in this regard is a change in our relative economic positions of such nature as to induce us to seek some concession from the

(Testimony of John A. Barr.)

union. That may happen at some time in the future but is not an immediate problem.

As Mr. Ball stated, we do not think that the Act places upon an employer the absolute duty to make counterproposals. This does not mean, however, that we are to take an abnormal or unnatural attitude with regard to counterproposals. We should explain our position on any point being bargained when requested to do so, and in many instances this will, in substance, include a counterproposal whether or not it is expressly so labeled. There is no objection to this procedure—it is a perfectly normal thing to do. In many instances a present practice, the *status quo*, may thus be offered as a counterproposal. Mr. Ball did not mean that counterproposals, in the broad sense, should never be made. He meant only that we should not take the initiative in the bargaining process.

To state it in different words, we do not want you to feel under abnormal restraint in the statement of the Company's position with respect to the points being bargained. This is necessary to good faith and we should not be unduly concerned over whether or not our statement of position contains what might be considered a counterproposal. Just keep in mind, however, that it is the union, not the Company, which is seeking an agreement.

The union may demand a closed shop. You will say "no" and give your reasons. No counterpro-

(Testimony of John A. Barr.)

posal is involved or called for. Again, the union may ask for 75¢ per hour for a certain job. If this is too high you will decline the demand and if the union asks for your reasons or for a counterproposal you would probably state that you have made a study of this wage and have arrived at the conclusion that 60¢ an hour is the proper wage. Whether we call this a counterproposal or not is not of primary importance.

This letter is probably unnecessary but I thought I might be able to add a mite of clarity to a subject which, at best, is not too clear. I will close with a "recapitulation" of some of the high points:

1. The purposes of bargaining are best served by oral negotiations. We need not state our position to the union in writing.

2. The union is seeking something from us. We are not to assume the initiative by volunteering proposals or counterproposals.

3. In discussing individual clauses state that you have no present objection to clauses which are not objectionable, but do not "agree" to such clauses. You can only agree to a contract as a whole.

4. Insist on a "no-strike" clause without qualifications or exceptions.

5. Whenever in doubt as to what you should do resolve the doubt in favor of the Company. Err on the side of conservatism if you err at all.

6. Do not rush the bargaining process and do not yourself take the initiative in seeking an agreement.

(Testimony of John A. Barr.)

7. Bargain in good faith. State the Company's position on the points raised honestly and frankly. Your statement of position may or may not contain what might be considered as a counterproposal.

8. Whether or not any agreement reached will be reduced to writing and signed can only be determined after an agreement is reached. Prior to that time a discussion of this point is premature.

You're doing a good job, Bill. Keep it up. Keep us advised of what you are doing and contact us immediately if something gets "hot".

Good luck.

JOHN A. BARR

JAB/s

P. S. I am forwarding this to you as a privileged communication.

J. A. B.

I agree 100%.—S. B.

RESPONDENT'S EXHIBIT No. 19

Air Mail

Personal and Confidential

Portland, Nov. 13, 1940

Mr. J. A. Barr:

Law Department

Chicago, Ill.

Re: Warehousemen's Union—Portland

Yesterday Mr. Huddleston, Mr. Glassley and I met with representatives of the Warehousemen's

(Testimony of John A. Barr.)

Union in Mr. Huddleston's Office. The Union representatives were Mr. Estabrook and Mr. Holmes, representing the Warehousemen at Portland and Mr. Towers, representing the Warehousemen at Oakland. The discussion did not concern the Warehousemen at Oakland but we were told that Mr. Towers had come up from Oakland merely to sit in during the negotiations.

The agreement submitted by Estabrook was discussed, Section by Section, as follows. During this discussion the Union representatives made very few comments on our statement of the Company's position and it was apparent they were desirous of hearing the Company's position on all the provisions before presenting any argument.

Article 1. We stated that the first sentence of Article 1 was not a subject of agreement but contains a question of fact which neither the Union nor the Company is free to agree upon. When Estabrook stated it was very important to have some such statement in the agreement, we suggested that the statement might be placed in a preliminary "whereas" clause.

In regard to sentence 2 of Article 1 we stated that we were perfectly willing to let the Union decide for itself which employees should be eligible for Union membership.

Article 2. We stated we could not agree to this article for the reason that the policy of the Company is to allow the employees full freedom of

(Testimony of John A. Barr.)

choice in regard to joining a labor organization. We made it clear that the Company could not agree to influence its employees either directly or indirectly in this regard.

Article 3. Section 1—We explained that we could not agree to Section 1 as it is worded. We stated that we could agree to a provision somewhat like this: no employee shall work less than four hours per day; no female employee shall work more than eight hours per day; the work week shall consist of 40 hours of work from Friday to Thursday inclusive excluding Sunday. This statement conforms to our present policy although we did not make the statement that this was our present policy. Mr. Estabrook suggested that we pass over that point for the present.

Section 2—We explained that due to the service demanded by our customers some employees must start work at 5:30 A. M. and they will finish early whereas other employees will come in late in the morning and may work until after 6:00 P. M. Therefore we could not agree to Section 2. Also, we stated that overtime was figured on the weekly basis of 40 hours rather than upon a daily basis.

Section 3—We stated that we had no objection to Section 3 except that we would not pay overtime for Saturdays, Washington's Birthday or Armistice Day.

Article 4. We stated that we could not agree to the minimum wages set out in Article 4 for

(Testimony of John A. Barr.)

the reason that they were much too high and the Company is not in a position to pay such a high scale. Estabrook and Holmes then asked us what we felt the schedule of minimum wages should be. I replied that we had set up a list of minimum wage rates which we would be willing to agree to. Before the meeting Mr. Huddleston, Mr. Glassley and I had prepared the list for the classifications indicated in Article 4 and we had indicated the minimum rates as an hourly rate rather than a weekly rate. Also, we had indicated whether the particular job was plus bonus or without bonus. I read this list to Mr. Estabrook and he jotted down the figures on his copy of the proposed agreement.

Also, we objected to the words "for any cause" in the first sentence of the last paragraph. We explained that those words would have to be stricken out and the Union representatives agreed.

Article 5. We had no objection to this Article except to say that overtime was figured on a weekly basis rather than a daily basis, that is, we explained that a Mail Order employee might work 9 hours one day and 7 hours the next day and he would not receive overtime unless he worked more than 40 hours in that week.

Article 6. We stated we could not agree to Article 6 as written. We were pressed for a counter proposal on this point. As a matter of fact we do have working Supervisors in the Portland Plant and we stated we could agree that each working

(Testimony of John A. Barr.)

Supervisor should be paid at least 3¢ per hour more than any employee directly under his supervision.

Article 7. We had no objection to Article 7 providing the Union would agree to change the word "five" to "six" which is our present practice.

Article 8. Section 1—This provision is covered by law and is not a subject for agreement.

Sections 2 and 3—Our objection to both of these Sections was that the Company could not agree to vest the final decision as to the discharge of an employee or as to the physical condition of an employee in any third party. We explained that the Company desires that the ultimate decision as to whether or not an employee shall be discharged must remain with the Management. We took the same position in regard to the physician selected by the Company.

Article 9. Here we explained that the Company's decision in the matter of layoffs and re-hiring is determined by a consideration of many factors including seniority, efficiency, ability, adaptability, promotability, flexibility, age, sex and marital status. Therefore, we could not agree to the provisions in Article 9.

Article 10. We had no objection to this article providing it was understood that a vacation would not be granted until after a full one year of service.

Article 11. We stated we had no objection to the first and second sentences. We stated we could not agree with the third sentence as it appeared

(Testimony of John A. Barr.)

to abrogate the Union's obligation under sentence #1. Estabrook and Holmes declared that they would not in any event unconditionally agree not to strike. They stated they would not agree to give up that right entirely. They believe the third sentence is advisable because then they could not strike unless the strike was sanctioned by the Portland Central Labor Council. As we understand it, in order to have a strike sanctioned by the Portland Labor Council it is necessary for the Union to present their case to the Council showing that the members have voted for a strike and a date is set for a hearing at which time the employer may come in and state his case. After this hearing the Labor Council decides whether or not to sanction the strike.

Before the meeting Mr. Huddleston and I had decided that we could express our agreement with sentences Nos. 1 and 2 but that we would object to sentence No. 3. The conclusion we reached after the meeting was that unless we want to insist upon an unconditional agreement not to strike there will be no harm in agreeing to sentence No. 3. However, we did think it advisable to insert in sentence No. 3 after the words "by some union" the following phrase: "other than Warehousemen's Union, Local #206." Of course, we do not yet have the Union's reaction to this thought. Therefore, I would appreciate any additional comments you may have in regard to Article 11.

(Testimony of John A. Barr.)

Article 12. We had no objection to sentence No. 1. Also we had no objection to sentence No. 2 except that we could agree to that provision only for our full time regular people. We explained that our part time, regular people receive holiday pay on a prorata basis whereas temporary people are not paid for holidays. We had no objection to the third sentence of Article 12.

Article 13. Here we went into quite a bit of detail to express fully to the Union representatives our objections to a Board of Adjustment. In a word, our position was that the Company desired that the ultimate decision on matters affecting the operation of the business should remain in the Management. Estabrook stated they would be willing to withdraw Article 13 as they had received some adverse decisions from Adjustment Boards recently. In other words, he meant to convey that it would be to our advantage to have Article 13 in the agreement.

Article 14. Estabrook did not suggest a term for the agreement and I explained that if we could agree on the terms then we would submit the matter to our Chicago Office where the decision as to the term of the agreement would be made.

Mr. Estabrook and Mr. Holmes then stated that they would like to consider our position further and they were very sorry but they could not meet with us any time during the balance of this week. They stated that they had a strike on their hands in the

(Testimony of John A. Barr.)

grocery industry and they hoped to have it settled by the end of the week. Mr. Estabrook said he would telephone me in Oakland sometime next week and that he would be glad to come to Oakland for further discussion.

Also, Estabrook asked if we could, in the meantime, prepare a written statement of terms which would be agreeable to the Company. He expressed the belief that we were obligated to submit our position in writing. I answered that it would serve no purpose for us to submit written terms until he could assure us that those terms would be agreeable to the Union. Estabrook then said he did not know whether or not the terms would be agreeable. He said they would have to submit the terms to their membership to find out if the members would agree. He then repeated his request that we prepare an agreement in writing which will be agreeable to us. He said then they would have something to submit at the meeting of the Union members. I again replied that I did not see any point in our submitting a written proposal until he could assure us definitely that the terms would be agreeable. The meeting then broke up with nothing further being said on this point.

I would like to submit this for your consideration. Do you feel that our obligation to bargain in good faith requires that we submit the Company's position in writing? The question of reasonableness is involved here and I have not yet reached a con-

(Testimony of John A. Barr.)

clusion in my own mind. There is some argument to the effect that if we will state verbally the terms which are agreeable to us we should have no objection to reducing those terms to writing. This seems to be in line with the Court decisions which require that an employer is obligated to sign an agreement where he has reached a verbal agreement with a Union. On the other hand it seems that we are perfectly within our rights to say that there is no reason to submit our terms in writing until we reach a meeting of the minds by verbal discussion. It does seem useless to present our terms in writing when we are pretty sure they will not be accepted.

Another point to consider is the Union's statement that they want something in writing to submit to their membership and there is a question as to whether we are obligated to furnish a written statement of terms for that purpose.

As Estabrook will probably call me next week I will appreciate your comments as soon as possible. Will you please send a copy of your reply to Mr. Huddleston.

W. B. POWELL,
Law Department.

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 20

Airmail

Oakland, California

Personal & Confidential

November 26, 1940

Mr. John A. Barr

Law Department

Chicago, Illinois

Re: Labor Relations

This will confirm our telephone conversation of this morning. The meeting yesterday was held in Mr. Clerin's office at two p. m. The union representatives were Messrs. Estabrook and Holmes from Portland, Towers from Oakland, White, who is secretary-treasurer of the Western Warehouse Council San Francisco, Wood, Cohen (the latter two purporting to represent the retail clerks in Alameda County) and Nathan who is international representative of the retail clerks for Northern California. There were three other men who came into the meeting late and I did not get their names. The company representatives were Messrs. Clerin, Jenkins, Cook, Barr and myself.

The case for the union representatives was presented by Mr. White and his statements were just about the same as those contained in the newspaper which I sent you. He wound up his speech with an ultimatum that unless the company would agree to a union shop at Portland they were prepared to take joint action against the company in the eleven Western states. Mr. Estabrook then suggested he

(Testimony of John A. Barr.)

would be glad to fly to Chicago to talk with you, if there was some possibility that our policy could be changed. At first they insisted we give them a reply within twenty-four hours, but later agreed to allow us until noon on Thursday, November 28. I will wait until Thursday morning at which time I will call Mr. White in San Francisco and explain that you will be glad to meet with union representatives in Chicago and listen to their argument, but I will not assure him that any change in policy is contemplated. If White insists that I state whether or not a change in policy is contemplated, I will state that as far as I know no change is contemplated at the present time.

After I talked to you I called Mr. Huddleston and informed him of developments. Mr. Huddleston said he had received word that the Sears plant in Seattle has re-opened without an agreement for a closed shop having been signed.

The possibility of picketing presents this question. If picket lines are established before our people come to work, some employees, when they see the picket line, may think the plant is closed and they will hesitate to enter the plant. It seems to me that it would be proper for us to have a few selected employees standing on the sidewalk to answer that question, if it is asked by employees coming to work. In other words, the only function of those men standing on the sidewalk would be that if employees asked whether or not the plant

(Testimony of John A. Barr.)

was open the reply would be yes. This procedure might prevent employees congregating in groups around the picket line. If employees hesitate to enter the building and form groups on the sidewalk, it is possible a labor orator will jump on a soap box and say a few words on unionism. Of course, our representatives on the sidewalk will say nothing other than to answer the question as to whether the plant is open.

Also, if there is some labor trouble and newspaper reporters come in to see us, I am wondering if the company desires any statement to be made to the press? Of course, the text of any statement we might make would depend on what fact situation developed, but I am wondering if the company desires to refuse to make any statement whatsoever, or if we should make some brief statement as to just what situation exists?

Thank you for your letter of November 22.

W. B. POWELL,

W. D. P.

Law Department

WBP:RD

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 21

Portland, Dec. 13, 1940

Mr. John Barr
Law Department
Chicago.

Re: Labor Relations

The following is a report of the meeting held in Mr. Huddleston's office at 10:00 A.M. on Friday, December 13.

Present in behalf of the Company were Messrs. Huddleston, Barth, Denecke and Powell. Present in behalf of the Unions were the following:

Messrs. Lamber—Retail Clerks Union, Seattle,
Wash.

Jack Schlaht—Teamsters Union, Portland

James Landye—Attorney

Howard Hicks—Office Workers Union

Eugene Allen—Editor, Labor Press

Fred Dixon—Retail Clerks Union

Max Langford—Retail Clerks Union

Bill Lamberton—Retail Clerks Union

Bill Glazier—Warehousemen's Union,
Seattle

Jack Estabrook—Warehousemen's Union

Gust Anderson—Secretary, Central Labor Council

Phil Brady—President, Central Labor Council

(Testimony of John A. Barr.)

Mark Holmes—Warehousemen's Union,
Portland

Also, Mr. Frank Ashe, Federal Conciliator attended the meeting.

The meeting was opened by a few remarks by Mr. Brady, stating that we were all here to find some solution to the present difficulty and that he would like to know what suggestion the Company had to make as a solution to the problem. I replied that I had no suggestion to offer and asked him if the Union representatives had decided on a plan or a proposal which they would suggest. Mr. Estabrook then stated the Unions were particularly concerned with the matter of recognition and he asked what the Company would be willing to do in that respect. We replied that in the case of the Union which he represents, the National Labor Relations Board had certified his Union as the sole collective bargaining agent and, therefore, we had no choice but to recognize the Warehousemen's Union as the sole collective bargaining agent for the unit defined in the Order of Certification. We explained that this was not a matter of agreement but was a question of fact which had been decided and we would recognize that fact.

Mr. Brady then asked how far we would go in recognition of that fact. I stated that the answer to his general question would depend on what proposals were submitted by the Union. We explained that wherever a Union represents a majority of

(Testimony of John A. Barr.)

our employees in an appropriate bargaining unit, we would recognize that Union as the sole collective bargaining agent.

Mr. Estabrook then asked if the Company would agree to the closed shop provision in the proposal he had previously submitted. We answered that the Company's policy had not changed in that respect and that we could not agree to a closed shop. He then asked if we could agree to a union shop and we answered that we could not. Some of the other union representatives suggested some modifications of the Union shop provision and in each case we replied that we could not agree.

Then Mr. Dixon asked if there was any question as to recognition of the Retail Clerks. I replied that we had accepted a letter from him with his statement that his organization represented a majority of the employees in our Retail Store and I asked him if his Union still claimed to represent a majority of the people. He replied that the Union did still claim to represent a majority. This is interesting because our Retail Store figures show that approximately 71% of the basic organization has been at work during the strike.

Mr. Glazier stated that Sears Roebuck & Co. in Seattle had signed a union shop contract to settle their recent strike and he thought we should do the same. However, I stated that the union shop provisions which had been submitted to us thus far were not acceptable as we could not agree to them.

Then Mr. Landye assumed the spokesmanship for

(Testimony of John A. Barr.)

the Union representatives and asked what counter-proposals the Company had to offer to the proposals which had been submitted. He asked if we had any counter-proposal to the provisions for Union shop. I replied that as the Company had a substantial objection to a Union shop provision I could not conceive of any counter-proposal the Company could make on that point. He then asked if the Union shop provision were omitted would the Company agree to the remainder of the proposal which had been submitted. I explained that the only proposal which had been discussed thoroughly was the proposal submitted by Mr. Estabrook in behalf of the Warehousemen's Union and pointed out that the proposal submitted by Mr. Dixon had not been discussed thoroughly because when Mr. Dixon found that we could not agree to the union shop clause he stated it would not be worth while to discuss the remaining clauses. The union shop provision was Section 2 so all the remaining sections were never discussed with Mr. Dixon.

Mr. Landye then asked if we would agree to the proposal submitted by Mr. Estabrook if the union shop clause were omitted. I stated that the Company could not agree to the remainder of the proposal as the Company had substantial objections to certain provisions. Landye then stated that since the Union had submitted to us a proposal which was not acceptable, it was our duty to submit to the Union a proposal which would be acceptable to us. I replied

(Testimony of John A. Barr.)

that in our negotiations thus far the Unions had submitted proposals to us and that we had no proposals to submit or any demands to make upon the Union. I did state, however, that our proposal or demand at present was that the picket lines be removed and the employees be allowed to return to work. I added that the Company had no other proposal to submit nor did the Company intend to make any other demands on the Union.

Landye then insisted that we submit some counter-proposal in writing. I replied that if the Unions desired they could consider our statement of the Company's position as counter-proposal for each provision. I added that it was my feeling that since the Union had submitted a proposal negotiations could be best handled by oral conversation which is flexible and that I saw no purpose to be served by submitting the statement of the Company's position in writing. Both Landye and Glazier asked that we prepare a written counter-proposal and submit it to the Unions by 10:00 o'clock the next morning. We answered that we had stated the Company's position frankly in regard to each one of the Union's proposals and that we had nothing further to submit. Landye stated it was common practice among employers to submit a counter-proposal even before negotiations were entered into and he thought we should adopt that practice. Landye asked us if we were willing to write a counter-proposal and I answered that I didn't feel it was necessary in view

(Testimony of John A. Barr.)

of our oral statement of the Company's position. We made it clear that the Company was not making any demands upon the Union and Landye replied that the Company never would make demands on the Union. Then he said "Will the Company give three counter-proposals of your ideas as to what a Union agreement should be?" He added that we should incorporate our ideas as to hours and wages in our complete counter-proposal. We stated again that if we were making demands upon the Union we would probably submit a proposal to them but that as we are not making demands upon them it would not be necessary to submit a proposal in writing.

Landye then asked the direct question "Will you submit a counter-proposal in writing?" to which I replied "No". Landye then said "That's all I wanted to know," and rose from his chair and prepared to leave.

Also, Mr. Holmes asked if we would submit to him a statement of the Company's position, in writing, for the agreement submitted by Estabrook and I replied that I thought no purpose would be served by so doing.

The Union representatives broke off negotiations and Glazier, Schlaht, Estabrook, Allen, Lamberton and Landye got up and walked out of the meeting in a huff. The other Union representatives stayed behind and shook hands with us before they left. The following remarks were made by the Union

(Testimony of John A. Barr.)

representatives as they left—Mr. Glazier stated “I’m going back to Washington and put the whole state on the Unfair list”. Jack Schlaht left the meeting with the remark “I guess they want more fight.”

As soon as the Union representatives had left Mr. Ashe asked if he could have a word with Messrs. Barth, Huddleston, Denecke and Powell. Mr. Ashe wanted to know if there wasn’t some proposal we could submit on the matter of recognition. We explained again that we did not consider the matter of recognition a matter for agreement but that if such a clause had any place in an agreement it should be in a preliminary “whereas” clause rather than a part of an article of agreement. Mr. Ashe then started reading from a long list of various types of union shop clauses and asked if any of those would be acceptable. I asked if he had an extra copy of that list and he replied he thought he could get one. Mr. Huddleston offered to have copies made so three copies were typed up and the original returned to Mr. Ashe.

Mr. Ashe stated that there was no legal obligation on the part of the Company to enter into a written agreement on the matter of recognition in view of the Wagner Act. Also Mr. Ashe said he had checked into the question of grievances and he had satisfied himself that no grievances had been reported.

The meeting broke up about 11:30 and Mr. Ashe left about 12:15 P.M.

(Testimony of John A. Barr.)

At 1:30 P.M. Mr. Ashe called back and suggested another meeting at 10:00 o'clock Saturday morning in Mr. Huddleston's office. I replied that we had nothing further to submit but that if he felt a further meeting was advisable we would be glad to meet. We stated that we were anxious to cooperate with him and asked for his judgment as to the desirability of another meeting. He replied that he wanted to have another meeting before he reported to Washington so that he could be sure in his own mind that negotiations were absolutely deadlocked. We agreed to meet at 10:00 o'clock Saturday morning.

W. B. POWELL

RESPONDENT'S EXHIBIT No. 22

Portland, Dec. 14, 1940

Mr. John Barr:
Legal Department
Chicago, Ill.

Re: Labor Relations

This is a report of the meeting in Mr. Huddleston's office on Saturday, December 14 at 10:00 A.M.

Present on behalf of the Company were Messrs. Huddleston, Barth, Glassley, Denecke and Powell. Mr. Ashe, Federal Conciliator, attended the meeting. Present on behalf of the Unions were Messrs. Hicks, Allen, Estabrook, Dixon and Langford, whose titles are mentioned in my letter of Decem-

(Testimony of John A. Barr.)

ber 13 to you. I asked Mr. Allen what group he represented and he stated he was President of the Office Employee's Union.

Mr. Ashe opened the meeting with the question as to whether the Company had anything at all in the way of a proposal to submit which might provide a basis for an agreement. I answered that the Company had nothing further to submit at this time other than our statement of the Company's position in regard to each one of the proposals which had been submitted to us thus far. Also, I added that the Company did have a demand to make upon the Union and that demand was that the picket line be removed and the employees allowed to return to work.

I stated that yesterday we had replied "No" to the question "Will you submit a counter-proposal in writing?" I added that the answer was still—No—but that we would like to elaborate on that point. I stated that by answering "No" we did not mean to imply that the Company has a policy against counter-proposals and that I did not mean the Company would never submit a counter-proposal. However, we felt that we had nothing further to submit at this time other than the statement of the Company's position which they could consider as counter-proposals if they chose.

I stated there might be situations in which a further proposal on the part of the Company would be desirable and that if Montgomery Ward was running a sweat shop, paying very low wages for

(Testimony of John A. Barr.)

a high number of hours each week, the Company might feel it advisable to make some counter-proposal. But, I said, we do not feel that the Company is running a sweat shop and that I thought the Union representatives would agree with that statement. None of the Union representatives made any comment or reply to that statement.

Mr. Estabrook asked if we would be willing to accept the agreement which Sears Roebuck in Seattle had entered into. I replied that I did not know what that agreement contained but from the statements of Mr. Glazier I understood the agreement contained a provision for a Union shop and, I added, if such was the case this Company could not agree. No one in the room knew what was in the Seattle agreement so that subject was dropped. Allen then asked if the Company would be willing to sign an agreement which merely sets out the present policies and practices. I replied that the question of the form of agreement, that is, whether it should be verbal or written, is premature at this time. I suggested that if we could reach an agreement upon substantial provisions, then that question should be considered. Allen then stated that if we could reach agreement would we be willing to sign it. I replied that possibly we would but that I thought a discussion of that question was premature.

Messrs. Estabrook and Dixon brought up the matter of wages and claimed we were not paying the prevailing scale. We disagreed on this point and

(Testimony of John A. Barr.)

stated that we felt the Company is paying wages equal to or better than wages paid by other local employers for comparable jobs.

Mr. Ashe then suggested that we take one of the proposals and go through it section by section so all of us would understand just what the Company's position is on each point. I answered that if he thought such procedure was advisable we would cooperate but that the Company's position had not changed since we had gone over the provisions of the proposal submitted by Mr. Estabrook. Mr. Estabrook stated his recollection was we had objected to every clause in the proposal although he later remarked he did remember that we had made no objection to some of the provisions.

Mr. Ashe thought it would be a good idea to get a statement of the Company's position in writing so he would know just where we stand. I replied it seemed to me the purpose of negotiations were best served by oral conversation which is flexible. Mr. Ashe suggested and later insisted that we have a stenographer in the meeting to take down verbatim everything that was said. We stated such procedure would destroy the flexibility of negotiations and we did not feel it was necessary. Mr. Ashe said he would be willing to bring his own stenographer so that he himself would have a record of just what the Company's position is. I called to his attention the fact that he had attended our meeting of last Saturday in the City Hall at

(Testimony of John A. Barr.)

Oakland, at which meeting we had stated the Company's position on the provisions of the Union proposal. Mr. Ashe replied that he did not remember just what was said at that meeting and he felt sure the Union representatives did not understand just what the Company's position is. I stated we did not feel the presence of a stenographer would facilitate the discussion and that we would object to such procedure. However, I added later that I would find out if it was the Company's desire that stenographic notes be taken and I would call him later in the day.

Mr. Estabrook mentioned that he would not insist that the Union have a copy of the stenographic notes and that he wasn't interested in having a copy for the Union. Estabrook indicated that the Union representatives would be willing to come to the meeting without a stenographer and merely make pencilled notes.

The meeting adjourned with the understanding that we would meet again at 10:00 A. M. Monday and the question as to whether we would have a stenographer present was left undecided.

W. B. POWELL.

W. B. Powell

(Testimony of John A. Barr.)

RESPONDENT'S EXHIBIT No. 23

Portland, Dec. 17, 1940.

Mr. John A. Barr
Law Department
Chicago.

Re: Labor Relations.

The following is a report of a meeting held in Mr. Huddleston's office at 10:00 A. M. Monday, December 16. Present in behalf of the Company were Messrs. Huddleston, Barth, Denecke and Powell. Mr. Ashe, Federal Conciliator, attended the meeting. Present in behalf of the Unions were Messrs. Dixon, Hicks, Allen, Estabrook, Holmes and Langford.

The meeting opened with a request by Mr. Estabrook that we go over the Warehousemen's proposal section by section. I mentioned that we had gone over the the proposal before and we would like to know if there were some provisions of the proposal which the Union felt were essential and should be discussed first. Mr. Estabrook stated he felt the provision for Union shop was essential. I repeated our objection to a Union shop provision and asked if Estabrook was willing to withdraw the Union's demands in that respect. He stated they were not willing to withdraw their demand for a Union shop. We then stated that we wondered whether it would be advisable to discuss the remaining provisions snice we were deadlocked on the question of Union shop. Also,

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

we pointed out that we have substantial objections to the seniority clause and to an arbitration clause. We explained that the Company does not recognize seniority in the sense that the Union uses that word. We made the further statement that unless the Unions were prepared to withdraw their demands in regard to Union shop, seniority and arbitration, that we questioned the value of a discussion of the remaining provisions.

Mr. Ashe said he thought that point was well taken and he turned to the Union representatives for their reply. The first reply by Estabrook was that his Union would not withdraw its demand for a Union shop but after a discussion with the other Union representatives, the Unions took the position that the question as to the withdrawal of their demands would have to be submitted to the union membership and they stated that they did not have authority to withdraw the demands. We then asked the Union representatives if there was a possibility that their demands for Union shop would be withdrawn and Mr. Estabrook said there was a possibility.

With that understanding we proceeded to a discussion of the Warehousemen's proposal, section by section.

Article 1. We stated that the first sentence of Article 1 is a question of fact and not a subject for agreement. We pointed out that if such a statement has any place in the agreement it should

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

be in a preliminary "whereas" clause. The Union representatives attempted to reword the first sentence of Article 1 and we suggested that possibly the language of the Order of Certification by the National Labor Relations Board would express the fact accurately. Mr. Ashe suggested a wording somewhat as follows—"whereas the Warehousemen's Union #206 as certified by the National Labor Relations Board as the proper collective bargaining agency for a certain unit and the Company recognize such Union as the designated bargaining agent . . ." He asked if we had any objections to that statement and we said we thought that would be all right. We felt the second sentence of Article 1 is not a subject for agreement and should be left to the uni-lateral decision of the Union.

Article 2. We presented our objection to a Union shop and again asked if the Warehousemen's Union was prepared to withdraw this demand. Estabrook said they were not, but said the Union membership might vote to withdraw it at some later date.

Article 3. Section 1. We stated that the first sentence of this section was alright as regard to female employees. However, it was objectionable as applied to Male employees. As to the second sentence we stated that the week should run from Friday through Thursday and if so worded it would be agreeable to us. We stated that Section 2, first

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

sentence, was open to the same objection as sentence 1 of Section 1 when applied to Male employees. Also, the 8:00 A. M. to 6:00 P. M. phrase was objectionable as it was necessary, to give our customers the service they demanded, to have some people come to work at 5:15 A. M. Also, on occasions, we desired our people to work after 6:00 o'clock without being obligated to pay time and a half. As to the second sentence of this Section, we explained that we pay overtime on a weekly basis rather than a daily basis. On this particular section, as well as throughout the meeting, the Union usually noted our objections and passed on without any argument.

On Section 3 of Article 3 we stated we had no objection to this Section if Saturdays, Washington's Birthday and Armistice Day were eliminated. We also objected to the inclusion of Sunday, stating that we usually paid time and a half for Sunday work but only because such work nearly always was over the 40 hour quota of the people involved but we did not believe it possible to agree to pay overtime for all Sunday work.

As to the wage provisions in Article 4, we stated that we were unable to make any concessions in the matter of wages. We also stated that the Company was at present considering a new plan of classification of wages. Some one of the Union representatives asked if the proposed plan included the elimination of the bonus system and the paying

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

of a wage based upon the average six months earnings. We stated that we believed the elimination of the bonus system was a possibility under the new plan but the details of the plan had not as yet been worked out.

As to the last paragraph of Article 4, we objected to the phrase "for any cause" and suggested in its place a clause meaning that no reduction should be made because of the operation of this agreement. As to the last sentence of this paragraph, we objected because it provided for a Board of Adjustment. Estabrook and Dixon stated they were willing to eliminate the Board of Adjustment as they believed it was more favorable to the employer than to the employee. However, Mr. Holmes spent some time in arguing the desirability of an Adjustment Board. Mr. Ashe tried to tell us that we had to accept the Board of Adjustment because of the Wagner Act. However, on further discussion he admitted that he believed the Board of Adjustment referred to in this agreement was similar to a Grievance Committee. Estabrook clarified him on this point.

Article 5 was unobjectionable if the second sentence were interpreted in the light of our suggestion for Section 2, Article 3, that is, figuring overtime on a weekly rather than a daily basis.

We objected to Article 6 on the ground we did not believe we employed persons such as those mentioned. Also, we inquired whether the second

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

sentence of Article 1 did not eliminate such persons from the jurisdiction of the Union. Also, we stated we could not grant any concessions in the rate of pay of these people.

We stated we had no objection to Article 7 if the five were changed to six.

We objected to Section 1 of Article 8 and a long discussion ensued. Ashe agreed we were bound as a matter of law to observe the policy set out in this Section and stated he saw no reason for us objecting to its inclusion in an agreement unless we merely did not want to give the Union the satisfaction of having it there. He also read to us similar clauses in other agreements and asked us if we would change these other agreements in other industries. We stated it was up to those people as to what they desired to put in their agreements. Then the Union representatives and Ashe argued that such a clause should be included because a lot of the Union members did not know of a similar provision in the Wagner Act. Finally the Union agreed to pass to the next clause.

We objected to Section 2 of Article 8 because it involved the Board of Adjustment and stated that it was the philosophy of the Company that in order to run the business properly the ultimate decisions in these matters must fall to the Company Management and not to any third party. Our objection to Section 3 was based upon the same theory.

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

We objected to all of Article 9 because it involved the seniority rule.

We had no objection to Article 10 if it was understood that there was no right to a vacation until the person had been employed one year.

The first two sentences of Article 11 were unobjectionable to us. We objected to the third sentence on the ground that it seemed contrary to the duty assumed by the Union in the first sentence. We asked whether the Union was willing to insert after "some union . . ." the phrase "other than Warehousemen's Union, Local #206". Holmes stated they objected to such insertion. Holmes also stated that while the Warehousemen's local was a member of the Central Labor Council, it was not always necessary that the Central Labor Council sanction every strike by one of its members. When asked whether or not the present strike was sanctioned by the Central Labor Council before it began, Holmes replied that it was.

The first sentence of Article 12 was not objected to by us. The second sentence was unobjectionable as to full time employees. We explained that pay for holidays for part time employees was prorated. The last sentence was unobjectionable except as our objections to Section 3 of Article 3.

We objected to Article 13, reiterating our past objections to Boards of Adjustments.

This finished our discussion of the Warehousemen's agreement. Estabrook asked how employees

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)
now out would be taken back on the payroll. We explained they would be taken back without discrimination because of the fact that they were out. We also informed them that soon we would be making the Christmas lay off and there would not be jobs available for some of them. We then had a brief discussion of Union activity in the plant on Company time. Holmes was willing to forego Union activity on Company time and property.

We then turned to the Office Worker's agreement. Dixon and Hicks stated they would be willing to submit one proposal covering the whole Retail Store as agreed in their letter. They stated that the Office Worker's proposal before us was to cover only Office Workers in the Mail Order House. Hicks, when asked whether he claimed a majority of such people, said "Yes" he did, that he had at least 70% and when asked, stated he would send a letter to us to that effect. We did not state whether or not we would accept the letter. He also stated he was willing to take any reasonable means to convince us he had such a majority.

In discussing the Office Worker's agreement we only took up those clauses which were not dealt with in the Warehousemen's agreement and also, as requested by the Union representatives, we told them which clauses in this agreement we had no objection to.

As to Article 1, we stated that here argument over the question as to who was to be in the juris-

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

diction of the Union was not a subject for agreement but rather something for the uni-lateral decision of the Union.

Article 5 was unobjectionable except that the second sentence would be open to our repeated objection as to which days should be designated as Holidays and also it would apply only to full time employees.

Article 6 was alright if it were agreed that the Section applied no decrease would be made because of the operation of this agreement.

Article 7 would be agreeable if the "five" were changed to "six" days and the "40th hour" changed to the "45th hour". Also, the 8 hour day was acceptable only so far as female employees are concerned. We passed on from this clause without discussing the remaining sentences.

We objected to Article 9 on the ground that basically it was an application of the seniority rule.

We objected to Article 10 on the ground that we have no apprentice classification and we were not willing to agree to such provision, no matter what such classification was called.

Article 12 was alright. Article 14 was given a very novel interpretation by Mr. Dixon. Mr. Dixon stated that as we all knew the birth rate in this country was on the decline and that anything which could be done to preserve the sacredness of motherhood would be a great achievement and that this clause was intended for the benefit of the female

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)
employees. We stated that this was a novel clause to us and we would like to think it over. Also, we gave a brief explanation of the W. E. B. P.

We had no objection to Article 15 if the "15" were changed to "10" and stated that at the present time although our rule was ten minute rest periods we did not check the time closely and did not penalize occasional rests over ten minutes.

As to Article 16 we asked if this substantially is the same as the provision contained in the National Draft Act. Hicks stated he believed it was but did not know whether such provision applied to women. Holmes and Hicks stated that in both their agreements they would be willing to incorporate the language of the Draft Act. We stated that we certainly intended to observe in substance the policy outlined in this Section.

We then briefly discussed Article 11 and while we made no concrete objection to it we did not agree to it. It was stated by Hicks that a 5% change in the cost of living had not occurred in at least a year and a half in Portland. We also pointed out that the clause seemed a little one-sided because of the last sentence.

We then discussed the wage scale in Dixon's proposed agreement for the Retail Clerks and told him we could make no concession in this regard. At this point in the discussion we asked whether they considered this concern a sweat shop. They said it wasn't as bad as some concerns but they

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

definitely believed substandard conditions existed, especially in the matter of wages. Dixon stated that the scale provided for in this agreement is observed by all the "Specialty" shops down town but admitted it was not followed by the Department Stores.

He then stated very directly that he too could make no concessions in minimum wages because of the Charter in his Union. The minimum wages set in his contracts with the Specialty shops could not be lowered in any other agreement.

This finished the discussion of the agreements. Ashe stated that the papers had been after him for statements as to the issues in this dispute and he stated to us what he intended to tell them and asked our opinion. In his opinion the issues were some form of Union shop, wage increases, some sort of an Arbitration Board and Seniority. Then we stated that was substantially correct, however, we believed that seniority should be interpreted. Ashe stated he felt seniority should be interpreted as it was in the railroad agreement, namely that length of service was the only consideration in the laying off and rehiring. At first the Union agreed with this. Then, however, Estabrook stated that they meant seniority to be only a fact in laying off and rehiring and that merit and ability could also be considered. He admitted this was not the intent of the various clauses in the agreements but stated that they were willing to consider some such clause

(Testimony of John A. Barr.)

(Respondent's Exhibit No. 23 continued)

in considering merit and ability along with seniority. We stated there were other factors beside these three. Then Estabrook stated that after we got through adding all of these other factors seniority didn't mean anything. Ashe agreed to omit Seniority as one of the issues.

The meeting disbanded with no plans for a future meeting. In the afternoon Ashe called, stating that he had been requested by Washington to get us together for at least one more meeting and we stated that if he believed that advisable we would do so, so a meeting was scheduled in Oakland at 10:00 A. M. on Wednesday, December 18.

W. B. POWELL,
A. H. DENECKE.
A. H. D.

Redirect Examination

Q. (Mr. Ball) Mr. Barr, in connection with the two advertisements run in the Portland papers, which you stated you drafted, Respondent's Exhibits 11 and 12, did you at the time of drafting them believe those statements to be true and correct?

A. I did, sir, and I still believe they are true and correct.

Q. In the course of the responsibilities which you have outlined, have you ever known of any instance where wage demands have been made and

(Testimony of John A. Barr.)

met by those charged with the responsibility of conducting the negotiations in connection with the company's policy which you have outlined?

A. Yes, on several occasions.

Mr. Ball: I think that is all.

Trial Examiner Bokat: Any recross, Mr. Landye?

Mr. Landye: No.

Trial Examiner Bokat: Mr. Walker?

Mr. Walker: No.

Trial Examiner Bokat: The witness is excused.

(Witness excused)

Trial Examiner Bokat: I understand that Mr. Walker has one witness, a Mr. Fullerton, which he would like to put on the stand at this time.

Mr. Ball: I understood that that witness was to be called tomorrow, and I have excused Mr. McGowan. Other than that, I would have no objection to the calling of Mr. Fullerton. [548]

There is always the question of confrontation by the party who is charged. Other than that, I would have no objection.

Mr. Walker: Mr. Fullerton has a job and is now working, and that is the reason it would be difficult to have him here tomorrow.

Mr. Ball: He was here the first day or two of the hearing, was he not?

Mr. Walker: I think that is correct, but he has now a job and is working.

Mr. Ball: Under those conditions, I certainly would not object, although there is the question of confrontation. I will waive any objection to his testimony being taken now.

Trial Examiner Bokar: We are now on the Board's case again, the previous witness having been taken on out of order.

ROBERT FULLERTON

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokar: Give your name and address to the reporter.

The Witness: Robert Fullerton. 7325 North Williams.

Trial Examiner Bokar: How do you spell your name, Mr. Fullerton?

Mr. Fullerton: F-u-l-l-e-r-t-o-n (spelling).

Direct Examination [549]

Q. (Mr. Walker) Have you ever been employed by Montgomery Ward? A. Yes, sir.

Q. When?

A. Since May of 1935 until this last December.

Q. Until December 7, 1940? A. Yes.

Q. During the time that you were employed there, what was your position?

A. I was stock man in Divisions 68 and 85.

Q. Who was your supervisor?

(Testimony of Robert Fullerton.)

A. Mr. W. A. McGowan.

Q. Following December 7, did you have occasion to meet with Mr. McGowan?

A. Yes. I did.

Q. Where? A. At my own home.

Q. How long after December 7 was that?

A. Well, I would say it was about the middle of the week.

Q. Following December 7?

A. Following December 7.

Q. What time did he come to your house?

A. Between 10:00 and 10:30.

Q. Prior to that time had Mr. McGowan been to your house?

A. He had never been there before, nor has he been there [550] since.

Q. Did you have a conversation with him at that time? A. Yes.

Q. What was it? A. Well, he just,—

Mr. Ball: Just a minute. I will object to this conversation. It certainly has not been shown that any conversation between these individuals would be binding upon the respondent; furthermore, any conversation between these individuals would be incompetent, irrelevant and immaterial, and would not tend to prove or disprove any issues in this case.

Trial Examiner Bokar: Overruled. You may answer the question.

Q. (Mr. Walker, continuing) Just go ahead and tell us, Mr. Fullerton, what was said by Mr. McGowan and what you said to him.

(Testimony of Robert Fullerton.)

A. Along about ten o'clock or 10:30, he came along and knocked on the door, and he was fluttering this way (indicating).

Mr. Ball: I move to strike that remark.

Trial Examiner Bokat: Yes, it may be stricken. I am sorry the record did not get the motion of the hands, indicating "fluttering". Just go ahead and state what was done or said.

A. (Witness continuing) He came to the door and knocked, and I came to the door, and he asked if he was welcome, and I said "Yes, come in." Then he said, "My wife is out here, can she come in, too?" I said, "All right." And he goes lugging along getting his wife, and he comes in with a couple quarts of beer, [551] and we proceeded,——

Mr. Ball: I move to strike that part of the answer involving descriptions by the witness, and ask that he be instructed to state the facts.

Trial Examiner Bokat: Well, I assume that is the witness' method of description in explaining what took place. You say that Mrs. McGowan came in?

The Witness: Yes.

Trial Examiner Bokat: He brought her in?

The Witness: Yes, he brought her in.

Q. (Mr. Walker, continuing) From that point on, what was said by Mr. McGowan and what did you say?

A. Well, he said that he was just making a friendly call, coming around, and then we talked

(Testimony of Robert Fullerton.)

about a few more or less inconsequential things, and then he said he was doing that with all of the fellows that he felt he could trust.

Mr. Ball: I have a standing objection?

Trial Examiner Bokat: Yes. The record will show that you have a standing objection.

A. (Witness continuing) So he said that he was coming around to each and every one that he figured he could trust, that was working on the floor, in order to get them back to work, and to tell them that if they were not there by a certain date, they would have to have their jobs refilled.

Trial Examiner Bokat: Were you on strike during this [552] time?

The Witness: Well, I didn't go through the picket line.

Trial Examiner Bokat: It has been testified that the strike started December 7?

The Witness: Yes.

Trial Examiner Bokat: Did you return that week?

The Witness: I did not.

Trial Examiner Bokat: Were you working the day that Mr. McGowan came to your house?

The Witness: No.

Trial Examiner Bokat: Proceed.

Q. (Mr. Walker, continuing) When Mr. McGowan said that your places, or the places of those would be filled who did not return to work, did you say anything to that?

(Testimony of Robert Fullerton.)

A. Sure. I said I was not going back to work as long as the picket line was there.

Q. Will you repeat that, please?

A. I said I wouldn't go back to work as long as the picket line was around the store.

Q. Did Mr. McGowan say anything after that?

A. No, he didn't say anything along that line, because he had been my employer long enough to know that when I made up my mind to do something, he wouldn't put up any argument for to,——

Q. Was anything said by Mr. McGowan about the union during that conversation? [553]

A. Well, he said that Montgomery Ward would never go union, that if it did, they would lock the door.

Q. Now, about how long did that conversation with Mr. McGowan last?

A. Oh, he was there, maybe, about three-quarters of an hour, I imagine.

Trial Examiner Bokar: Did you say he was there about three-quarters of an hour?

The Witness: Maybe about three-quarters of an hour; three-quarters to an hour.

Q. (Mr. Walker, continuing) Have you related everything that you can recall that was said at that conversation?

A. Well, I told him as long as there was a picket line around there, I wouldn't go to work. I told him I didn't have any other job, but that I would find one, and then he said that if I wanted a recommen-

(Testimony of Robert Fullerton.)

dation, for to let him know, that he would give me a verbal recommendation over the telephone, but he wouldn't put it down in writing.

Q. How did Mr. McGowan happen to make that comment?

A. We were just talking about it.

Q. How did that meeting with Mr. McGowan end? A. How did it end?

Q. How did that meeting with Mr. McGowan end?

A. He just said there wasn't any use for him to stay any longer, so he went home. [554]

Q. Did he say anything before he left? Did he say anything to you?

A. Well, he invited us out to his open house for New Year's.

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Ball) Did you have some conversation at that time, that evening, about casting flies for bait?

A. Oh, my wife was working where they make them, and I showed him some that she made.

Q. You had a rather friendly discussion about that? A. Yes.

Q. You had told Mr. McGowan about this before, had you not? A. No, I had not.

Mr. Ball: That is all.

Trial Examiner Bokat: The witness is excused.

(Witness excused)

Trial Examiner Bokat: Are there any further witnesses on the part of the Board, Mr. Walker?

Mr. Walker: I have no further witnesses, Mr. Examiner. At this time, I move to amend the complaint by interlineation, inserting in paragraph 7, on page 3 thereof, the last line, the words "handling or" between the word "in" and the word "selling".

Trial Examiner Bokat: How would that read, now?

Mr. Walker: "In handling or selling".

Trial Examiner Bokat: May I suggest to Board's counsel that [555] the motion to amend the complaint with regard to the appropriateness of the unit as contended for by the union and as testified to by Mr. Dixon would not cover, it seems to me, that phrase. That is, it wouldn't cover the phrase which you have just used in moving to amend the complaint. I just thought, if you so desired, you might think it over and come in tomorrow morning with a more specific unit contended for by the union.

Mr. Walker: That will be all right. Then, with the exception of that matter, and the matter of producing the compilation of the Clerks' representation in the unit, I rest.

Trial Examiner Bokat: You rest?

Mr. Walker: Yes.

Trial Examiner Bokat: The Board rests, with that exception?

Mr. Walker: Yes.

Trial Examiner Bokat: I am not going to rule on your motion to amend. I will consider it withdrawn.

Mr. Ball: I was just going to say, that I am going to defer the making of a motion to dismiss the complaint until after the conclusion of the testimony; without waiving any rights, of course.

Trial Examiner Bokat: That is perfectly all right. I will at this time recess the hearing until 9:30 tomorrow morning.

(At 10:05 p.m. April 16, 1941, hearing adjourned to 9:30 a.m. April 17, 1941, same place.) [556]

Trial Examiner Bokat: The hearing will come to order.

Mr. Ball: It is stipulated by and between the parties that the Respondent has furnished a list of all employees in its retail store on its payroll on December 5, 1940, and that the number of employees on the payroll of the respondent's retail store at Portland subsequent to November 1st at no time exceeded the number on this payroll, and that this payroll may be introduced in evidence as Board's Exhibit 13. The number of employees on this payroll, Board's Exhibit 13, is 418, and includes the manager and all supervisory employees, these parties being so identified on the exhibit.

The Witness Dixon would testify that of the 418 employees designated on Board's Exhibit 13, 217 were eligible for membership in the Retail Clerks' Union, and are those classifications of employees who

fall within the unit which the Retail Clerks' Union claims to be appropriate in this proceeding.

That up to and including December 6, 1940, the Retail Clerks' Union had received signed applications for membership from 142 of these 217 employees, and subsequent to December 7, received signed applications from 46 of the said 217 employees. That the Retail Clerks' Union has, in addition to these 142, signed applications from 44 employees who are not listed on the payroll Board's Exhibit 13, whose applications were received prior to that date. [561]

It is further stipulated by and between the parties, that these are employees who had been on the payroll of Montgomery Ward at some time subsequent to May, 1940 and prior to December 5, 1940.

It is stipulated that the witness Dixon would testify that at all times subsequent to August 6, 1940, the Retail Clerks' Union has had signed applications from a majority of those employees of the Retail Store of the Respondent at Portland which fall within the classifications of the 217 employees listed on Board's Exhibit 13, which the witness Dixon claims would be eligible for membership in the Retail Clerks' Union.

It is stipulated and agreed that of the 142 employees who had applied for membership in the Retail Clerks' Union prior to December 7, 7 have not at any time gone on strike.

And it is further agreed that the applications mentioned above, received by the Union subsequent to December 5, represent employees who had not

designated the Union prior to December 5, but who did go on strike and did make such designation after that date.

Trial Examiner Bokat: Is it so stipulated?

Mr. Ball: It is so stipulated.

Trial Examiner Bokat: Is it so stipulated, Mr. Walker?

Mr. Walker: Yes. [562]

Trial Examiner Bokat: I would like to have the record show clearly the purpose of the stipulation.

This has been done, as I understand it, in the spirit of cooperation, to save time. Mr. Dixon, a representative of the Retail Clerks' Union, has produced in the hearing room, all of the signed designations and applications for membership in the Retail Clerks' Union; is that correct, Mr. Dixon?

Mr. Dixon: That is correct.

Trial Examiner Bokat: That you have all here, and they are available to check by any of the parties who desire to look at them; is that correct?

Mr. Dixon: That is correct.

Trial Examiner Bokat: You have already checked the designations as against the payroll of December 5, 1940, supplied by the respondent to the Board.

Mr. Dixon: On that payroll, yes, but I think it needs some explanation.

Trial Examiner Bokat: Does the payroll show that you represent the majority that you contend for at all times since August 6, 1940? Off the record.

(Discussion off the record)

Trial Examiner Bokat: The answer to that question is "yes"?

Mr. Dixon: Yes.

Mr. Ball: The Respondent is not questioning the fact that the applications produced in court by Mr. Dixon were really [563] received by the Union and represent the parties whose names appear on the applications.

Trial Examiner Bokat: As I understand it, Mr. Ball, your objection goes to the appropriateness of the unit, and not as to the fact as to whether or not the union has a majority in the unit they claim?

Mr. Ball: Our position is that we do not know, and it has not been proven that the union spoke for a majority of the employees in the appropriate unit.

Trial Examiner Bokat: All right.

Mr. Ball: Comes now the Respondent and moves to strike out the answer of the witness Estabrook reading "One of the most important reasons is that the membership got tired of Montgomery Ward stalling us around", which appears on page 143 of the record, on the ground that it states a conclusion and opinion of the witness, and does not establish any facts which have any probative effect, and doesn't tend to prove or disprove any issues in this case, and relates to a state of mind.

Mr. Walker: May I be heard on that?

Trial Examiner Bokat: Of course, you are lifting the sentence out of the context, with which I am not familiar.

Mr. Ball: I am perfectly willing to let the Exam-

iner defer his ruling, so long as the Examiner rules before the Board has rested its case.

Trial Examiner Bokat: Doesn't the record show that you have made an objection to that particular question? [564]

Mr. Ball: I don't know whether it shows at that particular point or not. It is not so indicated on the record that I made any specific objection to that answer.

Trial Examiner Bokat: Inasmuch as the answer to which the motion is directed appears to be one of the reasons why the membership of the Warehousemen's Union struck the plant of the respondent, I will deny the motion.

Mr. Ball: I think that is all I have at this point.

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Mr. Walker: With exception of the motion to amend paragraph 7 of the complaint, the Board rests.

Mr. Ball: At this time, the Respondent asks leave of the Examiner to reserve the right and privilege to file a motion to dismiss at the close of the case, said motion to be directed at the evidence given at this point, as well as the evidence at the conclusion of the case.

Trial Examiner Bokat: Very well.

Mr. Ball: Mr. McGowan.

W. A. McGOWAN

previously sworn, was called as a witness by and on behalf of the Respondent, and further testified as follows:

Trial Examiner Bokar: You have been previously sworn?

The Witness: Yes.

Trial Examiner Bokar: Give your full name to the reporter. [565]

The Witness: W. A. McGowan.

Direct Examination

Q. (Mr. Ball) You were in the court room yesterday when Mr. Hough testified? A. Yes.

Q. Will you tell the Examiner and the reporter and me what conversations you may have had with Mr. Hough in the week subsequent to the strike at Montgomery Ward last December 7?

A. On Wednesday night, following the trouble on Saturday, I came home from my work, and Mr. Hough and Mr. Long and Mrs. Long were waiting for me. The question was put to me by both Mr. Long and Mr. Hough as to what they should do about returning to work.

I told them at that time that I could not help them come to any decision at all, that they would have to make that decision themselves.

Q. Will you proceed to tell the course of the conversation in the meeting that night, who was present, what you said, what they said, what you did, what you talked about, how long it lasted?

(Testimony of W. A. McGowan.)

A. Well, we talked about the work at Ward's; we talked about the war; we talked about the kids and their personal things. I asked them if they would like to have a drink, and they said "yes"; and I had a little left in a small bottle, and then, later in the evening, I asked them if they would care to have another [566] drink, and they said "yes", and I asked Mr. Long if he would take me downtown and I would get another bottle. So Mr. Long and Mr. Hough and I proceeded to get another bottle, and we came back. Mrs. Long didn't drink hard liquor, so, on the way back, we got a bottle of beer.

We sat around and talked about several different things, as you do in an evening that way, and my wife suggested that she would make a lunch for them. And it came out that she was short of bread. She asked me to go to the grocery store to get a loaf of bread, and Mr. Hough said there was no reason why I should go, as he had bread in his car. So it came out, someone asked him why he had bread in the car, and he said that he was short of money and had been out selling bread.

So he brought the bread in, and my wife fixed a lunch, and a little after that Mr. Long and Mr. Hough left.

Q. Had you gone to Mr. Hough's home that day and asked him to call that evening?

A. No, sir; Mr. Hough called at the house, and I was at work. My wife so informed me, and told

(Testimony of W. A. McGowan.)

me that she told him. Anyway, he contacted me at work and said that he would like to get in touch with me. I said to come to the store or to my house, and then he asked for my number, and I gave it to him.

Q. What, to the best of your recollection, did he say to you about coming back to work? [567]

A. Well, he couldn't make up his own mind what to do, and he wanted me to express my opinion of what he should do.

Q. What did you say to him?

A. I told him, under the circumstances, it was impossible for me to help him arrive at his decision, and that was one thing he would have to do for himself.

Q. Did you suggest to him that he could come around the back way and thus avoid going through the picket line?

A. No; that was not brought up that evening at all.

Q. Did you have occasion to have another conversation with Mr. Hough?

A. Yes. Mr. Hough came to my house on Friday night of the same week.

Q. Who was present?

A. Mr. Hough, Mr. Long and myself. Mr. Hough and Mr. Long arrived at approximately the same time; it could not have been over three minutes difference.

Q. Was anybody else present?

(Testimony of W. A. McGowan.)

A. My wife was there.

Q. What was the course of the conversation on Friday?

A. The same thing came up again, that they couldn't make up their minds.

Q. By "they", whom do you mean?

A. Mr. Long and Mr. Hough.

Q. What else was said at that time?

A. The subject was brought up that they had been told that [568] the Spokane warehouse had been picketed, and they wanted to know if I knew about it, and I told them "no". It was also brought out that they wanted to know, and I told them that, if I personally wanted to know, I would buy some gas and drive over there and find out.

Q. What was said to that?

A. As far as I know, I don't recall.

Q. Did you, on this Friday evening, discuss or have any conversation about going through the picket line?

A. Yes.

Q. What was it?

A. It came out,—I know that I brought it out in this respect, that Jack Walker and a few of the boys were driving into the parking lot and coming to the plant that way. I personally said that I wouldn't go that way; that I would walk up the ramp to the second floor?

Q. By the "ramp", what do you mean?

A. The employees' entrance. It is a ramp that goes up to the second floor, which goes over the railroad track.

(Testimony of W. A. McGowan.)

Q. Would that or would that, not be going through the picket line?

A. That would be going through the picket line.

Q. And did you mention anyone who had taken that course?

A. Yes, I told them that I had watched Mr. Cereghino come up the front ramp. [569]

Q. Did you make any statement at any time about what you thought the position of Montgomery Ward would be in the strike?

A. The only statement I made was this, that I didn't think,—that was my own personal opinion,—that there would ever be a closed shop.

Q. Do you, in fact, have a contract with Montgomery Ward? A. No, sir.

Q. Did you ever make a statement that you had a contract that would permit you to go elsewhere if the Portland plant were closed? A. No, sir.

Q. And you make that statement here under oath? A. Yes.

Q. Were you ever instructed by any officer of Montgomery Ward to urge any employee who was not at work to come back to work through the picket line? A. No, sir.

Q. Were you ever instructed in any way at all about what you were to say to employees about coming back to work?

A. Yes, I have been instructed several times that if and when any employee was to come to me and ask me for any advice pertaining to the joining or

(Testimony of W. A. McGowan.)

not joining of any association whatsoever, that I was to tell them that I could not give them any information whatsoever.

Q. Have you or have you not carried out those instructions? [570]

A. I have carried them out.

Q. Approximately how many men and women in Montgomery Ward hold positions of responsibility comparable to you?

A. I would say 35 or 40.

Mr. Ball: Your witness.

Cross Examination

Q. (Mr. Walker) Were all the 35 or 40 at the meeting at which you received Respondent's Exhibit No. 7?

A. Not the 40, no.

Q. Were there 35 there? A. No.

Q. Who was there?

A. It was just the other men in the same capacity I have that were under the jurisdiction of Mr. Robinson.

Q. How many would that be? A. Eight.

Q. Did they all receive similar papers?

A. Similar instructions.

Q. And did they all carry out the calls the same as you did? A. That I cannot say.

Trial Examiner Bokat: They received instructions similar to yours?

The Witness: They received instructions.

Trial Examiner Bokat: Suppose an employee didn't have a telephone number? [571]

(Testimony of W. A. McGowan.)

The Witness: Suppose he didn't have a telephone number? What do you mean?

Trial Examiner Bokar: Were there any employees who didn't have telephone numbers, who worked for you?

The Witness: Yes.

Trial Examiner Bokar: Did you receive any instructions with regard to those employees who had no telephone numbers?

The Witness: No instructions were given as to that.

Trial Examiner Bokar: Do you know whether or not Mr. Hough had a telephone?

The Witness: No.

Trial Examiner Bokar: Do you recall whether or not you telephoned Mr. Hough?

The Witness: I did not telephone Mr. Hough.

Trial Examiner Bokar: Did you visit his house?

The Witness: No.

Trial Examiner Bokar: Did you visit the homes of any people that did not have telephone numbers and tell them the same thing that you were supposed to tell them over the telephone?

The Witness: No.

Q. (Mr. Walker, continuing) Do you know if Mr. Fullerton had a telephone?

A. No, he was not on my list.

Q. Was Jack Walker working at the plant at the time that you [572] talked to Mr. Hough and Mr. Long on Friday? A. Yes.

(Testimony of W. A. McGowan.)

Q. How long had he been working after December 7? A. That I couldn't say, offhand.

Q. When did he start to work?

A. With respect to the Friday that he talked with me?

Q. With respect to the Friday that you talked with Mr. Hough and Mr. Long?

A. Well, I couldn't give you any definite answer. I would like to look at the records.

Q. What is your best recollection now?

A. What is my recollection?

Q. Did he show up on Monday following the Saturday, December 7?

A. No, I think he showed up,—I think, now,—

Q. Yes,—

Mr. Ball: I will object to that, Mr. Examiner. That is hardly proper cross examination. It does not relate the matters gone into at this time.

Trial Examiner Bokar: I will let it stand at this time.

Q. (Mr. Walker, continuing) When was it that he showed up?

A. I think that it was on Tuesday.

Q. Had you contacted Jack Walker?

A. No, sir.

Q. By telephone? A. No, sir. [573]

Q. By a personal call?

Mr. Ball: It is understood that I am objecting to this as not proper cross examination, Mr. Examiner?

(Testimony of W. A. McGowan.)

Trial Examiner Bokat: I understand; overruled.

Mr. Ball: Not relating to matters gone into on direct.

Q. (Mr. Walker, continuing) Did you make a personal call? A. No sir.

Trial Examiner Bokat: Off the record.

(Discussion off the record) [574]

Q. (Mr. Walker continuing) Where does Mr. Walker work?

A. He works for me at Montgomery Ward and Company.

Mr. Walker: That is all.

Redirect Examination

Q. (Mr. Ball) Mr. McGowan, did you have any conversation with Mr. Hough on those two evenings that were not in the presence of Mr. Long?

A. No. The conversation I could have had with him couldn't have been more than two or three minutes at the most.

Q. Do you recall whether or not Mr. Long was present through all the two meetings that you have described?

A. Yes: because they both left together both evenings.

Q. Were you in the court room yesterday when Mrs. Blackburn testified? A. Yes, sir.

Q. What is the fact as to whether or not you received a telephone call from Mrs. Blackburn?

A. I did not, and have never, talked to Mrs. Blackburn over the telephone, after December 6th.

(Testimony of W. A. McGowan.)

Q. Did you hear, in any manner, of any call Mrs. Blackburn made for you to the apartment asking for you?

A. Yes, I was notified on Tuesday morning that Mrs. Blackburn had called Monday and said she would be unable to come to work.

Q. Who reported that to you?

A. Allan Murphy. [575]

Q. You had no discussion at all with Mrs. Blackburn about that call? A. That is right.

Q. You know Mr. Fullerton? A. Yes.

Q. Do you recall any occasions you may have had to go to Mr. Fullerton's home?

A. I do.

Q. How many times had you gone to Mr. Fullerton's home? A. Two or three times.

Trial Examiner Bokar: How many?

The Witness: Two or three times.

Q. (Mr. Ball continuing) Were those prior to December 7th or subsequent to December 7th?

A. Prior.

Q. Do you recall, did you go to his home subsequent to December 7th? A. Yes.

Q. Tell us about that incident.

A. My wife and I went to Mr. Fullerton's house,—we took along a bottle of beer,—and we went in, and Mr. and Mrs. Fullerton were there, and we talked and drank the bottle of beer. Then Mrs. Fullerton was talking about a hobby that she had, about the making of fishing flies during her odd mo-

(Testimony of W. A. McGowan.)

ments at home after work. She brought those out and showed them to [576] us. Then we went in the front room and my wife sat down at the piano and tried, as usual, to play. Then,—I can't distinctly recall if Mr. Fullerton or Mrs. Fullerton sat down and did play the piano, and we sang three or four songs. Then after that, we went in the kitchen again, and there was one or two more bottles of beer opened and we sat around there and talked. Then the conversation come up about the difficulty we were having over there at the company, and Mr. Fullerton said he wouldn't go back again ever, that he would never work like he had worked. And I told him that I hadn't come over there to argue with him about his work or my work, I had come over to visit, as I had before, and that I didn't want to stay there and argue with him about it,—because it would have ended in an argument. I told the wife to get her hat and coat, that we were going to leave,—which we did.

Q. Did you ever, at any time, make any statement to Mr. Fullerton, or anybody else, that Montgomery Ward would never go union?

A. No, sir. The only statement that I had ever made to anyone was that I didn't think that they would go for a closed shop.

Q. How did it happen that you went to Mr. Fullerton's house that night?

A. Just driving around.

Q. Had you ever driven around to the homes of

(Testimony of W. A. McGowan.)

those who worked [577] for you prior to December 7th?

Mr. Walker: Just a minute. Object to that as incompetent, irrelevant, and immaterial.

Trial Examiner Bokat: Overruled.

The Witness: Yes.

Q. (Mr. Ball continuing) On what occasions?

A. On numerous occasions I have been out driving and go by the house of one of the boys who worked for me, and I have dropped in and chatted with them; I have had numerous of them over to the house, they dropped in on me. I have been to their houses on parties, and they have been over to my house on parties.

Q. What is the fact as to whether or not on the evening you came to see Mr. Fullerton, you had been out trying to get employees to come back to work?

A. No, I had not.

Mr. Ball: Your witness.

Recross Examination

Q. (Mr. Walker) Normally, on Saturdays, how long did you work?

Mr. Ball: What was the question?

Trial Examiner Bokat: Read the question, Mr. Reporter.

(Whereupon the last question was read aloud by the reporter as above recorded.)

A. At the present time I get off around 2 o'clock in the after- [578] noon.

(Testimony of W. A. McGowan.)

Q. Well, what do you mean, at the present time? Has there been some change?

A. There has been some change since that time.

Q. In December, 1940, what time did your usual shift end?

A. Between 5 and 6,—sometimes a little later.

Q. Sometimes you would have to work later in the evening?

A. That is right. In other words, preparing for the Christmas rush.

Q. You testified before that you worked Sundays every now and then? A. That is right.

Q. And that is usually in anticipation of a seasonal upswing? A. That is right.

Q. You usually worked Saturday evenings during those periods, also?

A. On some occasions, yes.

Q. Where were you on the evening of Saturday, December 7th? Working at the store?

A. No.

Q. I mean, a little bit later than usual?

Mr. Ball: Well, I submit that was the day of the strike, and I rather imagine there was a great deal of turmoil.

The Witness: I think it was a little later: I can't say for sure. [579]

Q. (Mr. Walker continuing) Probably that night you had stayed there until about 8 or 8:30?

A. I can't say definitely what time I did get off.

Q. That would sound reasonable, would it?

(Testimony of W. A. McGowan.)

A. Yes.

Q. As your best recollection? A. Uh huh.

Q. What is Mr. Murphy's position?

A. At that time?

Q. Yes.

A. He was working for me, as correction clerk.

Mr. Ball: May I make a statement for the record? Mr. Murphy is here in the court room.

Mr. Walker: Oh.

Mr. Ball: If Mr. Walker wants to question him in any way.

Q. (Mr. Walker continuing) Did I understand you to say,—now, correct me if I am wrong in this,—did you testify that you had been to Mr. Fullerton's home since that time that you and your wife called at his house and you talked about flies?

A. No. I have never been back there since.

Q. I see. Now, were either of the Fullertons home on these two or three occasions before the 7th? A. I beg your pardon, what was that?

Trial Examiner Bokst: Read the question back.

(Whereupon the question referred to was read aloud by the [580] reporter as above recorded.)

A. Yes. His wife and he were home one time, and Mr. Fullerton was home another time.

Mr. Walker: I am sorry. I didn't get that answer.

A. I say, Yes. Mr. and Mrs. Fullerton were home one time, and Mr. Fullerton was home the other.

Q. About when was the first occasion, with re-

(Testimony of W. A. McGowan.)

spect to December 7th? Do you understand the question?

Mr. Ball: The witness testified he only went once after December 7th; and he went a few times before that.

Trial Examiner Bokat: No, no; he didn't testify to that. I don't remember he went after,—oh, yes, once, after the 7th.

The Witness: Once after the 7th and a couple of times before.

Trial Examiner Bokat: Now, Mr. Walker wants to know when it was, before the last visit, that he had dropped in at Mr. Fullerton's house.

The Witness: That is very hard to give a definite time on that. It was in,—I am sure that one of the visits was about two months before; and the other was around four or five months previous to that.

Q. Now, on the call that you made at the house about four or five months previous to December, December 7th, who received you that time? [581]

A. Mr. Fullerton.

Q. Just he alone? A. Yes.

Q. About what time of day did you come out there?

A. I would say it was about 7 or 7:30.

Q. Did you bring anything with you that time?

A. I have it with me all the time. I have a bottle of beer, as usual, on my calls.

Q. About how long did that visit last?

(Testimony of W. A. McGowan.)

A. About fifteen minutes, I would say off-hand. Mrs. Fullerton wasn't home.

Q. You didn't get the beer opened up that time?

A. I stepped up to the door, as far as I can say, and we stayed there at the door. I didn't go in because I found out Mrs. Fullerton wasn't there. We talked shop for a while, and then I left.

Q. Now what took place at the occasion about two months before December 7th?

A. Well, my wife and I went to the house; I would say we were there for half an hour or so.

Q. About what time of the day did you come to the house?

A. Around 8 o'clock, I would say. 8 or 8:30.

Q. Did you bring anything with you that time?

A. No.

Q. And did you have a talk? [582]

A. Yes. Just the usual shop talk. The women talked together.

Q. What do you mean "shop talk"?

A. Well, about the work; how it was going.

Q. Anything else? A. No.

Q. Can you tell me anything else you talked about at that time? A. No, I can't.

Q. Can you tell me anything else about the shop talk?

A. No. Just the usual, how the work was going, what needed to be done.

Q. What do you mean by that?

A. Oh, the condition of the floor, what we were

(Testimony of W. A. McGowan.)

trying to do, and everything else. Just a regular gabfest.

Q. When did you first start going around and calling on the employees who worked under you?

A. I have done that ever since I have worked at Montgomery Ward as a supervisor.

Q. Prior to July, 1940, had you made it a regular practice to call on all of the persons who worked under you? A. No.

Q. Now, did you know Donald Sipe?

A. Yes.

Q. Did he work under you?

A. Yes, sir.

Q. Did you know that any of the employees in your department [583] were being organized into a union? A. Did I know?

Q. Yes. A. I didn't know.

Mr. Ball: Well, I again question whether this has anything to do with the issues of this case.

Trial Examiner Bokar: I will let it stand, subject to some connection, at this time. I don't know. I will listen a while.

Q. (Mr. Walker continuing) Now, what was the witness' answer?

A. I did not actually know.

Q. I see.

Trial Examiner Bokar: You heard it by rumor, I suppose?

The Witness: That is right.

(Testimony of W. A. McGowan.)

Trial Examiner Bokat: That they were joining a union?

Q. (Mr. Walker continuing) About when did you first learn that?

A. Well, that was flying around out there for a year or two.

Q. Since last summer? A. Yes.

Q. The summer of 1940?

A. That is right; yes.

Q. Did you cause, or order, Mr. Sipe to go down and be interviewed by Mr. Huddleston around in July, 1940? A. No, sir. [584]

Q. Do you recall the occasion of Mr. Sipe passing out application cards for membership in Local 206, Warehousemen's Union, on your floor around July, 1940?

Mr. Ball: I object to this; it is getting into entirely different matter, and it has nothing to do with the Board's case whatsoever. It is unduly burdening this record.

Trial Examiner Bokat: I will have to say, Mr. Walker,—I mean this testimony might throw some light on so-called "various other acts", but I think it is something of which the respondent has no notice; it is something that you didn't indicate to Mr. Ball at the time you told him what you intended to put in. I believe, for that reason, I will have to sustain the objection. If you are going to go into a matter relating to an employee being questioned at the time he was distributing application blanks

(Testimony of W. A. McGowan.)

for the union,—I think it is rather late to go into it. We might continue here for days if you are going to pick up little bits of evidence that you feel might throw some light on alleged unfair labor practice of the respondent. I don't think it is fair to the respondent. I will have to sustain the objection.

Mr. Walker: Would you read my question, please.

(Whereupon the question was read aloud by the reporter as above recorded.)

Trial Examiner Bokat: Don't misunderstand me, please. I don't say that the testimony is incompetent; it may be very [585] competent; but it is not within the issues framed by this complaint.

Mr. Walker: Well, in order to save time, then, may I make an offer of proof?

Trial Examiner Bokat: Yes.

Mr. Walker: If permitted to continue the examination of this witness along the line started, the witness would testify to the following facts, as understood by me: That the person, Donald Sipe, was apprehended by Mr. McGowan in the process of distributing application cards for membership in Local 206 of the Warehousemen's Union, and thereupon he caused Mr. Sipe to go to the office of Mr. Huddleston for the purpose of a reprimand. That is all.

Trial Examiner Bokat: Well, I will reject the offer. And I will state for the record that the Board has already rested its case, with only one reservation, which doesn't cover this particular incident.

(Testimony of W. A. McGowan.)

That in the early part of the hearing, in an off-the-record discussion, respondent asked for some notice regarding the phrase set forth in the complaint "by various other acts". That, as I understand it, in an off-the-record discussion, and at the request of the Trial Examiner, Board's attorney supplied respondent with certain information that they would produce certain witnesses as to alleged acts of interference, restraint, and coercion under the phraseology of the "by various other acts". That such information supplied [586] to Mr. Ball did not contain any indication regarding the offer of proof just made by Mr. Walker. Is that correct, Mr. Walker?

Mr. Walker: It now becomes apparent to me that my purpose in attempting to elicit testimony is misunderstood. It is not being elicited by me for the purpose of proving any independent acts of coercion, interference, or restraint, in addition to that which I had related to Mr. Ball.

Trial Examiner Bokat: That is what I thought your purpose was.

Mr. Walker: My purpose in attempting to go into this matter is simply for the purpose of showing that this witness, having had first-hand knowledge of the organization being conducted among his employees on his floor, and that such organization became known to the management itself; thereafter, when the strike took place, the witness was instructed to contact all employees in his department who had

(Testimony of W. A. McGowan.)

not returned to work, for the purpose of urging them to go through a picket line, abandon their organization, and otherwise intimidate and coerce them to cease their union activity.

Trial Examiner Bokat: Well, as far as the second part of your statement is concerned, there has been no objection made to it. I will stick to my original ruling.

Mr. Walker: All right.

Trial Examiner Bokat: Let's proceed. Do you have any more questions? [587]

Mr. Walker: Nothing further.

Trial Examiner Bokat: Mr. McGowan, have you the list given to you by the management containing the names and telephone numbers of the employees?

The Witness: No, I have not.

Trial Examiner Bokat: Was this list typewritten or was it written out in longhand?

The Witness: It was written in longhand.

Trial Examiner Bokat: Can you recall whether there was a telephone number for Mr. Fullerton and Mr. Hough on that list?

The Witness: There was none for Mr. Fullerton and Mr. Hough; no. Not on my list.

Redirect Examination

Q. (Mr. Ball) Did the list cover all the employees in your department?

A. No. I only had a few of them.

(Testimony of W. A. McGowan.)

Q. Do you know whether some other people were assigned the task of calling men in your department? A. Oh, yes. Several of them.

(Off the record discussion.)

Trial Examiner Bokat: On the record. Redirect examination.

Q. (Mr. Ball continuing) Now, the list you were given to call, did it or did it not contain names of people other than those in your department? A. No. Just people in my department.

[588]

Q. Do you know whether it contained all of the names of all of the people in your department at that time? A. It did not.

Q. Do you know whether others were assigned the task of calling, under the same instructions, people who were in your department?

A. There were several people.

Q. Were you ever given any instructions to make any personal visits on any of the employees in your department? A. No, sir.

Mr. Ball: That is all.

Mr. Walker: Were the others, who were assigned the task of calling, those people in your department?

The Witness: Were the others, what?

Mr. Walker: Were the others, who were assigned to calling employees, were the others people in your department?

Mr. Ball: Don't you mean, were the others,

(Testimony of W. A. McGowan.)

who called people in Mr. McGowan's department, themselves employees of Mr. McGowan?

Mr. Walker: That is correct?

The Witness: No.

Mr. Walker: That is all.

Trial Examiner Bokat: Witness excused. We will take a ten minute recess at this time.

(Thereupon a short recess was taken, after which the following [589] proceedings were had:)

Trial Examiner Bokat: The hearing will now be in session.

Mr. Walker: I have now received the designation of the Trial Examiner and ask that it may be added to and made a part of Board's Exhibit 1.

Trial Examiner Bokat: It will be received and marked in evidence as part of Board's Exhibit 1.

(Whereupon the document hereinabove referred to was marked in evidence and made a part of the Board's Exhibit 1.)

Mr. Walker: It is stipulated and agreed between the parties that the individual, William Hough, in the month of December, 1940, did have a telephone. That the person,—

Mr. Ball: Fullerton did not?

Mr. Walker: Robert Fullerton did not.

Trial Examiner Bokat: All right. It is so stipulated. [590]

JOHN BIGGS LONG,

called as a witness by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Bokat: Give your full name and address to the reporter.

The Witness: John Biggs Long, 3015 Southeast Yamhill.

Q. (Mr Ball) Have you ever had any occasion to talk over the testimony in this case with me?

A. No, sir. Never seen you until today.

Q. You are the Mr. Long who was mentioned in the testimony of Mr. McGowan a few minutes ago?

A. Yes, sir.

Q. And you were at Mr. McGowan's home on the two occasions he described in his testimony?

A. I was.

Q. Will you tell the examiner and the reporter and counsel what took place at those two social gatherings?

A. You mean you want me to start at the beginning and go clear through it?

Q. Well, to the best of your recollection.

A. Well, the first night that I was out at Mr. McGowan's, arrived there with my wife, Mrs. Long, and Mr. McGowan wasn't there. Mr. Hough came in, and we waited for Mr. McGowan to come. Prior to this I had called up Mr. McGowan and asked him [591] if I may come over to talk to him.

(Testimony of John Biggs Long.)

Q. Speak a little louder, please.

A. My intentions to go there was to get the truth.

Trial Examiner Bokat: About what?

The Witness: About the goings on between,—at the store; and I tried to get some information,—if the union actually was doing what they claimed they were doing.

Q. At that time had you reported to work on December 7th? A. Had I reported? No.

Q. Had you reported to work on Monday, Tuesday, or Wednesday of the following week?

A. No, sir.

Q. You had not been out working, then, prior to the time you went to Mr. McGowan's home?

A. I had not.

Trial Examiner Bokat: Mr. McGowan was your superintendent?

The Witness: Yes, sir. Supervisor.

Trial Examiner Bokat: All right. Proceed.

Q. Had you ever had any occasion to go to Mr. McGowan's home before that time?

A. No, sir. I had never been to his home before then. I knew where he lived, and I had gone by there.

Q. Had he ever stopped in at your home?

A. No, sir.

Q. What did you say to Mr. McGowan after you got to his home? [592]

A. Well, I come right to the point that I had

(Testimony of John Biggs Long.)

come over for; and that was to get information that I just previously told you about.

Q. Was Mr. Hough there at that time?

A. No, sir. He was there when Mr. McGowan came in.

Q. You were there before Mr. Hough came?

A. Yes, with my wife.

Q. What did Mr. McGowan tell you at that time, in Mr. Hough's presence?

A. I tried to get Mr. McGowan to tell me,—advise me whether to come back to work or not.

Trial Examiner Bokat: Were you a member of the union at that time?

The Witness: I don't know as you would call it a member of the union; but I was one of the boys.

Trial Examiner Bokat: Had you signed anything for the union prior to that time?

The Witness: I had signed an application to join the union.

Trial Examiner Bokat: All right. Proceed.

Q. (Mr. Ball continuing) Had you come to Mr. McGowan's home in response to any telephone call or any suggestion on the part of anybody that you do so? A. Absolutely not.

Q. What did Mr. McGowan say to you?

A. Mr. McGowan told me that he could not advise me what to do [593] under the circumstances.

Q. Did Mr. Hough ask Mr. McGowan any question?

(Testimony of John Biggs Long.)

A. I think,—in fact, I know,—that his intentions were the same as mine. He wanted to get this information from Mr. McGowan, and the same questions came up and they were answered the same way.

Q. Did Mr. McGowan, at any time, suggest to Mr. Hough or to you, in your presence, that you come back to work and that you come through the back way so as not to go through the picket line?

A. Absolutely not; because I don't think that Mr. McGowan would be,—I believe that would be insulting his intelligence to think that he would do that,—it is an imaginary line established around the establishment. Why would he?

Q. Well, at least, he didn't make any such statement? A. No.

Q. Who was present during the course of the evening; during the time these conversations took place? A. Mrs. Long and Mrs. McGowan.

Q. Did Mr. McGowan say, at any time, that he had a contract with Ward's so that if the plant was closed down he would go to work some place else for them? A. No.

Q. Did he say anything like that?

A. I believe that where Mr. Hough has drawn his conclusion [594] from is Mr. McGowan's beliefs,—that he has got men in that store that he has worked on who carried his ideas through the store; and I believe that Mr. Hough is taking the

(Testimony of John Biggs Long.)

statement that Mr. McGowan believes that as long as he lives his ideas, some of them, will still be in the store even though he is gone.

Q. Did Mr. McGowan say to Mr. Hough, at any time, that Ward's would not go union, but would close the place down first?

A. Mr. McGowan told us that he didn't think that Montgomery Ward's would ever have closed shop.

Q. Did he make that statement voluntarily, or did it follow questions on the part of either you or Mr. Hough?

A. It followed questions on the part of me and Mr. Hough.

Mr. Ball: That is all.

Cross Examination

Q. (Mr. Walker) Mr. Long, you stated you wanted to get the truth of the matter. The truth about what?

A. Well, we had been informed that Oakland was being picketed and they were out on strike; Spokane was out on strike; that St. Louis had a picket line around it; Kansas City,—a dozen it seemed like to me. I couldn't see, for the life of me, how so many places could be in this condition and the store still operate; and that they were able to spread this strike from kingdom come, I guess, as far as that is concerned.

Q. You thought the union was exaggerating to you?

(Testimony of John Biggs Long.)

A. I did. I figured that Mr. McGowan would know it. I did [595] not get this information from Mr. McGowan.

Q. You felt that Mr. McGowan would be better-informed than the union?

A. That is right.

Q. And Mr. McGowan was the supervisor?

A. Yes.

Q. Where did you learn about Oakland, Spokane, St. Louis, Kansas City, and other points to kingdom come?

A. At the meetings?

Q. Union meetings?

A. Yes, sir.

Q. Was there something that caused you to doubt the things that the union had told you?

A. Yes. Just as I told you.

Q. What was it?

A. That I couldn't see how such a widespread operation could be carried on and Montgomery Ward still operate.

Q. What was it you were told at the union meetings about Oakland, Spokane, St. Louis, and Kansas City?

A. No, I will not say that the union told me that they were on strike?

Q. I know. I am just asking you to tell me what you learned.

A. Sometimes I figured the whole nation was out on strike the way rumors were going around.

Q. What did the union tell you? [596]

A. That I won't say, because I can't quote it.

(Testimony of John Biggs Long.)

Q. What is your best recollection?

A. That,—well, I will put it this way: That one house was out and that other houses was being picketed.

Q. Yes; that is what I wanted to know. What was the difference between those that were out and those that were being picketed?

A. That is something I can't tell you, personally not knowing the operations of unions.

Q. At any rate, you believed that the union wasn't telling you the truth. Is that correct?

A. That is right.

Q. And you thought that Mr. McGowan would tell you the truth?

A. I figured that through the information I could get from Mr. McGowan and the information I had already obtained from the union, and through the stores, that I could draw my own conclusion, and decide,——

Q. Did you think that Mr. McGowan would tell you the truth in the matter?

A. I don't see why I would have a reason to believe that.

Q. Now, can you answer my question? Did you believe that Mr. McGowan would tell you the truth in the matter?

A. Yes, I believed he would.

Q. Are you working now? A. Yes. [597]

Q. You are still under Mr. McGowan?

A. That is right.

Q. Did you work on December 7th?

(Testimony of John Biggs Long.)

A. Yes,—oh, no, I did not work on December 7th.

Q. When did you return to work after December 7th?

A. Eleven days after December 6th, on Tuesday.

Mr. Walker: That is all.

Mr. Ball: That is all.

Trial Examiner Bokat: Just one question. Did you know that Mr. Hough was going to be there that evening?

The Witness: I did not.

Trial Examiner Bokat: Did you have a telephone in your house on December 7th, or within a day or two thereafter? A. No, sir.

Trial Examiner Bokat: How many days was it, after you saw Mr. McGowan, you returned to work?

The Witness: Four days.

Trial Examiner Bokat: Was there a picket line there when you returned to work?

The Witness: Yes, sir.

Trial Examiner Bokat: How did you go in?

The Witness: By the ramp, the front door.

Trial Examiner Bokat: Did you cross the picket line?

The Witness: I did.

Trial Examiner Bokat: That is all. Any further questions? [598]

Mr. Ball: Why did you return to work, Mr. Long?

Mr. Walker: Object to that as calling for a conclusion of the witness.

(Testimony of John Biggs Long.)

Trial Examiner Bokat: Oh, yes. I will let it stand.

The Witness: You want me to answer?

Mr. Ball: Yes.

Trial Examiner Bokat: You may answer.

The Witness: Because I had decided that was the right thing to do.

Mr. Ball: That is all.

Mr. Walker: Just one question, if I may?

Trial Examiner Bokat: Go ahead.

Q. (Mr. Walker) At the union meetings prior to December 7th, had you been told that the union had proposed a contract to Montgomery Ward which, by its terms, sought a closed shop?

A. Repeat that question.

Mr. Walker: Will you read it.

(Thereupon the question referred to was read aloud by the reporter as above recorded.)

A. No, I wasn't.

Q. (Mr. Walker) How did the matter of closed shop happen to arise in this conversation with Mr. McGowan?

A. We asked Mr. McGowan that, if he figured that the store would ever go union. He come back with the statement,—just as I told you before,—that he personally did not think there [599] would ever be a closed shop in Montgomery Ward's.

Mr. Walker: That is all.

Mr. Ball: Thank you, Mr. Long.

Trial Examiner Bokat: Witness excused.

(Witness excused)

Mr. Ball: I want to state for the record that Mr. Murphy and Mrs. McGowan are here in the court room. I don't intend to produce them as witnesses; but I will keep them here for the time of the hearing, should the Board desire to call them.

Trial Examiner Bokat: I think it is in due order that we recess at this time for lunch. Do you gentlemen want more than an hour? Oh, suppose we make it until 1:15.

Mr. Ball: That will be satisfactory.

Trial Examiner Bokat: Hearing recessed until 1:15 p. m.

(Whereupon at 11:55 a. m. the hearing was recessed until 1:15 p. m.) [600]

Trial Examiner Bokat: The hearing will please come to order.

You made a statement to me, Mr. Ball, in an off-the-record [601] statement, that you did not intend, as I understand it, to dispute the testimony given by Mr. Dixon as the result of any checks that he may have made with regard to the number of designations or applications that they had within the claimed unit, but that your point of view, or dispute, as I understand it, is with the appropriateness of the alleged unit contended for by the union; is that correct, or, if I am not correct, I should be very pleased to have you put me right.

Mr. Ball: I think that it could be said that by agreement to the stipulation which stated that the witness Dixon would testify that he had these

designations, the respondent is willing to accept the truth of the testimony of Mr. Dixon about any matters covered by the stipulation.

Trial Examiner Bokat: That is sufficient.

I understand that you have another letter which you desire to produce which you have found in your files?

Mr. Ball: Yes.

(Thereupon a document was marked as Respondent's Exhibit 24 for identification.)

Mr. Ball: I offer Respondent's Exhibit 24 in evidence.

Mr. Walker: No objection.

Trial Examiner Bokat: It will be received in evidence as Respondent's Exhibit 24.

(Whereupon the document heretofore marked as Respondent's Exhibit 24 for identification, was received in evidence.) [602]

RESPONDENT'S EXHIBIT No. 24

Airmail

Personal & Confidential

Oakland, California

October 24, 1940

Mr. J. A. Barr

Law Department

Chicago, Illinois

Re: Retail Clerks Union—Portland

On Tuesday, October 22, Mr. Barth and I met with representatives of the Retail Clerks Union in

the Heathman Hotel in Portland. The representatives were Messrs. Dixon and Langford in behalf of the Retail Clerks and Mr. Hicks in behalf of the Office Workers Union.

At the start of the meeting I referred to the Unions' letter of October 2 to Mr. Barth in which they stated that they have an overwhelming majority of our store employees. My first comment was that their letter was incorrect in beginning with the phrase "As you know". I explained that as a matter of fact Mr. Barth did not know whether or not the Retail Clerks had a majority, and as the Union representatives knew that, there was no reason to insert the phrase "As you know" in the letter. Mr. Dixon agreed that the letter was incorrect in that respect and we proceeded with that understanding.

I asked Mr. Dixon and Mr. Hicks what percentage of employees each claimed to have. Mr. Hicks stated the Office Workers Union had signed up 25 of our office workers, which he said was 70% of the total. Mr. Dixon stated that the retail Clerks had signed up 175 employees, which he stated was 95% of the total store employees, excluding the office workers. Mr. Dixon stated that they would be willing to give us that information in a letter addressed to Mr. Barth. However, I made no request for a written statement at that time.

Later I checked the figures with Mr. Barth and found that there are 53 office workers in the store and 70% would be 37. There are 209 employees,

excluding the office workers, and 95% would be 198. Therefore, it appears that Messrs. Dixon and Hicks inflated their percentages and according to Mr. Hicks' statement that the Office Employees Union has 25 of our people, that amounts to less than 50%.

After the preliminary discussion about the question of majority representation, Mr. Dixon suggested that we discuss each section of the proposed agreement in the order in which the sections are listed. We replied that any procedure he desired to follow would be perfectly all right with us and we would be glad to follow his suggestion in that regard. When he asked if Section 1 would be acceptable to the Company I replied that we could not agree to the provisions of Section 1. As you will see from your copy of the proposed agreement, Section 1 provides for a union shop.

We explained that it was our policy to refrain from influencing our employees either directly or indirectly in their choice of a labor organization. We further explained that our employees are free to join a labor organization if they so desire, but that the Company does not require that its employees become members of any labor group. We stated very definitely that the Company could not agree to making membership in the Retail Clerks Union a condition precedent to employment. By way of illustration we mentioned that we might desire to hire a person with excellent qualifications and who after a few days on the job might show marked ability, whereas that same person, for rea-

sions personal to him, might not desire to join a labor organization. Under the circumstances we would consider it very unfair to that employee to require that he either join the Retail Clerks Union or be replaced. Also, we stated that the Company does not require that its employees belong to any certain church or any certain lodge, such as the Elks or Masons, and the Company does not feel it would be fair to its employees to require them to join a labor organization. Then too, we explained it would be unjust to require employees who are transferred to the Portland store to become members of the Retail Clerks Union. Perhaps those employees would have been in the employ of the Company for a matter of years, and it certainly would be unfair to require that when they come to Portland they must join a union.

When he had finished stating the reasons for the Company's position, Mr. Dixon expressed great surprise and stated this was the first time in his long experience that any employer had ever objected to Section 1. He thought that Section 1 was a harmless provision and our acceptance of that provision would merely be recognition of the Union. Then he stated that unless we could agree to Section 1 as written, he could see no reason for discussing the remaining sections of the proposed agreement. He said that at the A. F. of L conference in Cleveland last summer, it had been decided that no contract should be submitted to an employer unless it contained a provision for a union shop. Mr. Dixon

inferred that he would be the laughing-stock of the Labor Temple in Portland if he were to submit a contract without a union shop provision in it. Therefore, he said he would have to demand that we agree to Section 1.

Our reply was that we could not agree to Section 1. We stated that in order to agree to Section 1, we would have to violate our Company policy, which we would not do. Then Dixon said he would have to return to the employees to give them our position and that he did not know what action they would decide to take.

The next day as I was checking out of the hotel, Dixon called and asked if we had any counter proposal to offer. He stated that since we could not agree to Section 1 of the proposed agreement that we should offer some counter proposal. I explained that Section 1 proposed that we agree to something which is contrary to the policy of our Company and our counter proposal would be that the work of organizing the employees should be done by the union and whenever a new employee was not a member of the union, we would have no objection to the union attempting to secure that employee as a member. Also, I called to Mr. Dixon's attention the fact that he had decided not to discuss the remaining provisions of the proposed agreement, whereas we had come to the meeting prepared to discuss each provision. He then asked if we had any counter proposal to offer as to the entire contract. To this question I replied that there was certainly no rea-

son to talk about a counter proposal for the entire contract, as the only provision which had been discussed was Section 1. He then wanted to know when we could get together to discuss the remaining provisions. I told him I would probably be in Portland sometime within the next two weeks and would be glad to meet with him at a time which would be mutually convenient. I explained that Mr. Estabrooks had requested the meeting in behalf of the Mail Order employees and Dixon said he would keep in touch with Estabrooks to find out when I would next be in Portland. Dixon indicated he would like to resume the discussion of the agreement which he has submitted. It appears that overnight Mr. Dixon decided that our refusal to agree to Section 1 should not be a bar to future negotiations.

During our meeting on Tuesday Dixon made the statement that the Retail Clerks were having trouble with Sears Roebuck in Portland, that they had filed a charge of unfair labor practice against Sears. I thought this statement was interesting in view of the article about Sears which appeared in the American Labor Citizen.

W.B.P.

W. B. POWELL

Law Department

WBP-RD

Mr. Ball: I will call Mr. Powell.

W. P. POWELL

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Will you give your full name and address to the reporter?

The Witness: W. P. Powell, Oakland, California.

Direct Examination

Q. (Mr. Ball) You are the Mr. Powell who has been mentioned at several points in these proceedings? A. Yes.

Q. How long have you been associated with Montgomery Ward, Mr. Powell?

A. Since June, 1934.

Q. And in what capacity have you been employed?

A. My first position with the company was in the capacity of an order filler, in which I worked for some time.

Q. Where?

A. That was in the Chicago Mail Order House.

Q. Then what did you do?

A. Well, during a period of about,—well, almost exactly four years,—I was employed in various merchandise divisions as a stock man and as a packer. I worked in the billing and packing, in the order-clerical department, and in the adjustment department. [603]

(Testimony of W. P. Powell.)

Q. And then at the expiration of a period of four years, where were you located in the company?

A. In August, 1938, I was transferred to the law department of the company.

Q. When had you been admitted to the bar, and where had you taken your legal education, and during what time?

A. I was admitted to the bar of the State of Illinois in 1938, and I took my legal education at John Marshall Law School in Chicago.

Q. You took that work during the time that you were employed in Chicago?

A. Yes. The John Marshall Law School is a night school.

Q. At what time did you come into contact with the company's labor relations problems?

A. Well, the first contact I had was, oh, within two months after I came into the law department, which would be about September, 1938.

Q. At what time were you transferred to Oakland, California? A. On August 1, 1940.

Q. And at that time, what was told you about your responsibilities with regard to company labor relations problems on the Pacific Coast?

A. At the time that I was assigned to collective bargaining as my responsibility, Mr. Barr instructed me that I had full authority to negotiate with the representatives of our employees and that

[604]

if that question was asked me, I should so state.

(Testimony of W. P. Powell.)

Q. And what has been your understanding as to your responsibilities in the conduct of those negotiations?

A. My understanding has been that before we should go into negotiations with a union's representatives, it is my responsibility to discuss with the persons charged with the management of our particular branch, which, in this particular case would be Mr. Huddleston of the Mail Order house and Mr. Barth of the retail store,—to discuss with them questions of wages, as to whether the company's wage policy is being followed, and problems as to hours and working conditions which are governed largely by practices in the community in which the branch is located.

Q. What would be your understanding as to the manner in which wage adjustments might be made as the result of negotiations in collective bargaining?

Mr. Walker: Excuse me. May I object to this question as to form, particularly as to calling for an opinion and conclusion of the witness, and, further, that the matter is incompetent, irrelevant and immaterial.

Trial Examiner Bokat: I will accept it, subject to further connection, as to instructions or authority in that regard.

Mr. Ball: I wanted to show his authority.

Trial Examiner Bokat: I will let it stand as a preliminary [605] matter.

The Witness: May I have the question read?

(Testimony of W. P. Powell.)

Trial Examiner Bokat: Yes.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. If during the course of the bargaining process, wage demands are presented, and after I consult with the management, which in this case would be Mr. Huddleston and Mr. Barth, and they or either of them in their particular branch feels that a wage increase,—either a blanket increase or perhaps increases in certain divisions,—is warranted under the company's wage policy, we might then very readily offer such increases during the course of negotiations.

Trial Examiner Bokat: How did you arrive at that understanding, Mr. Powell? What caused you to arrive at that understanding? In other words, were you so instructed by Mr. Barr or any other particular official of the company?

The Witness: Yes, I was, although, I will say probably not in those exact words. However, I was instructed that it was my responsibility to confer with the management at the various branches to determine if the company's wage policy is being followed.

Trial Examiner Bokat: And what was that policy?

The Witness: Briefly, that policy is that we desire, wherever possible, to pay wages which are equal or better than wages [606] being paid for

(Testimony of W. P. Powell.)

comparable jobs by other employers in the same community.

Q. (Mr. Ball, continuing) As a matter of fact, did you have occasions to make such examinations in the questions of wage rates and working conditions in various locations? That is, where you were engaged in the collective bargaining process?

A. I recall particularly here in Portland, before we entered into a discussion with Mr. Estabrook, I sat down with Mr. Huddleston and Mr. Glassley, who was the personnel manager, to discuss the question of wages, and at that time Mr. Glassley produced and showed to me what is called a wage survey, which, Mr. Glassley told me, is made quarterly, and which shows rates,—monthly rates and, I believe, in some cases, weekly rates,—paid by other employers for jobs similar to ours in this community.

Q. Have you had occasion to report to Mr. Barr the fact that you made such surveys, or that you have had occasion to examine such surveys in connection with collective bargaining proceedings?

A. Yes, I have reported that back to Mr. Barr.

Q. And has he approved of your doing so?

A. Yes.

Q. What is the fact as to whether or not you have discussed with him problems that have arisen during the course of the negotiations, as to whether or not existing policies, as you [607] understood them, were to be continued or carried out in the particular situations?

(Testimony of W. P. Powell.)

A. Well, there has been a great deal of conversation and discussion between Mr. Barr and myself with regard to problems arising out of bargaining sessions.

Q. What common factor, as you understand it, exists in the company's policy with regard to various forms of closed shop, the problem of seniority and the problem of arbitrating discharges and disputes, as to promotions, promotability and demotions?

Mr. Walker: Same objection.

Trial Examiner Bokat: Overruled.

A. Is your question what common factor is,——

Q. (Mr. Ball, continuing) Yes, in the policy.

A. I would say the common factor is a principle in which the company believes,—by that, I mean the management of the company,—that in order to operate this business, the mail order business and the retail store business successfully, the ultimate decision in matters affecting the hiring and discharge of employees and matters generally affecting the operation of the business, should remain in the management of the company.

Q. You recognize that is subject, of course, to the effect of the collective bargaining process, including the economic situation in which the company might find itself in a given situation? [608]

A. Yes, that is true.

Q. Now, Mr. Powell, do you recall that a Mr.

(Testimony of W. P. Powell.)

Glazier of Seattle was present during some of these meetings?

A. Yes, I recall that. I met Mr. Glazier for the first time in Mr. Huddleston's office during the meeting of December 13, 1940.

Q. And what is the fact as to whether or not Montgomery Ward has any operation in the City of Seattle which employs employees who might be acceptable or eligible for membership in the Warehousemen's Union?

A. Well, of course, I can't say whether certain employees would be eligible for membership in a certain union, but I can say that the operation I know of in Seattle is an order office.

Q. And that is, simply, what?

A. An order office, is an office where customers can come in the same as they would come into a retail store, but, instead of actually buying merchandise right there, they select their merchandise from the catalogue, and the order is then sent in to the mail order branch, from which it is either sent direct to the customer or it is sent to the order office where the customer picks it up.

Q. To your knowledge, has Mr. Glazier made any claim to speak for or represent any employees of Montgomery Ward in the City of Seattle?

A. No, he has not. [609]

Q. I hand you respondent's exhibits 19, 20, 21, 22, 23 and 24, and I will ask you if you know what they are; if so, describe them.

(Testimony of W. P. Powell.)

A. Yes. The exhibits that you have mentioned are letters which I wrote to Mr. Barr.

Q. Were those letters all written by you on the dates that they indicate? A. Yes, they were.

Q. And are the facts set forth as described in those letters, those exhibits, correct as you now recall? A. Yes, they are.

Q. And do they substantially and accurately describe the matters that took place in the several meetings to which these exhibits relate?

A. Yes, they do. I might say that the letters, which are reports of meetings,—in fact, I believe they all are,—were dictated on the day the meeting was held or the following day.

Q. And were they intended by you to be full and complete reports of the essential matters which had taken place in those meetings?

A. They were: It was my intention to include in those letters the statements of what was said by the parties who were engaged in the collective bargaining session.

Q. Now, turning to Respondent's Exhibit 20, and using that to [610] refresh your recollection, would you tell the Examiner and the reporter what took place at the meeting of November 25 in Oakland, California?

Mr. Walker: Mr. Examiner, I object to this on the ground that the instruments now in evidence constitute the best evidence in that regard.

Trial Examiner Bokart: Mr. Ball, do you intend

(Testimony of W. P. Powell.)

to have the witness repeat what is said in Respondent's Exhibit 20, or to amplify matters set forth therein?

Mr. Ball: I intend to have him amplify some of the matters which, in this letter, are not described in detail, but are described more in the way of a conclusion or general statement.

Trial Examiner Bokat: If that is your purpose, all right, I will overrule your objection.

A. The meeting of November 25, 1940, was held in Mr. Clerin's office in Oakland, California. Mr. Clerin is the manager of the mail order house in Oakland. The company was represented by Mr. Clerin, Mr. J. P. Barr, Mr. Jenkins, Mr. Cook and myself.

Q. (Mr. Ball, continuing) Was Mr. P. W. Harris there? A. No, he was not present.

Q. All right, go ahead.

A. The unions were represented by Mr. White of San Francisco, Mr. Estabrook and Mr. Holmes of Portland, Mr. Wood, Mr. Cohn, and Mr. Nathan of the Retail Clerks' Union in California, and Mr. Peckner of San Rafael, and the others, I believe, are [611] stated in the memorandum. The meeting was opened up by Mr. White, who said that the committee that we saw before us then represented the Warehousemen and Retail Clerks in the eleven Western States.

He said that those organizations had been attempting to organize Montgomery Ward, and in one case,

(Testimony of W. P. Powell.)

he said, in Portland, the Warehousemen's Union had been certified by the National Labor Relations Board.

He said that Mr. Estabrook had attempted to get a signed contract for his group, but up to this time Montgomery Ward had refused to sign a contract.

He said, "Our purpose here is to see that we get a signed contract."

Then he said that from many localities he was receiving reports of intimidation and coercion of the employees by the company. I interrupted Mr. White and asked him if he could let me know where those instances occurred, and whom they involved. His answer was, "You will find out when the time comes."

I said to Mr. White that he had charged instances of intimidation and coercion over the telephone to me, and that I had read it in the newspaper, the American Labor Citizen, and he had written me a letter stating that, and I was anxious for him to let me know what some of those instances were so that, if the company was at fault, we could take corrective action. [612]

And I said, further, "Up to the present time, you have not furnished me with a single instance of intimidation and coercion which you have alleged, and unless you do, I don't see that there is much the company can do to correct it."

Mr. White said he would attempt to compile that

(Testimony of W. P. Powell.)

information and let me know. And then he said, "Will your company sign a contract?" I said that the answer to that question depended somewhat upon what proposal he would have to suggest. I said, "That depends on the particular proposal that you present." He said, "Well, I am talking about Article 2 in the Warehousemen's proposal". I replied that we did not have a proposal before us, and I didn't recall exactly what article 2 provided. He said that "Article 2 is the Union Shop clause which required employees must be members of the union."

I said that in our meeting with Mr. Estabrook we had objected to that provision, and we had stated our reasons fully, and that the company's position was the same in regard to that provision.

Mr. White then said, "Unless the Company will agree to that union shop clause at Portland, the American Federation of Labor, through the Warehousemen and Retail Clerks in the eleven Western States, will strike Montgomery Ward immediately." He said, "All I have to do is to go back to my office, send a teletype to various local branches, and tomorrow there will be picket lines around all your branches in the 11 Western States." [613]

Then he went on to say, "And that is what I am going to do unless you agree to Article 2 in the proposal that I have mentioned."

I said to Mr. White that if the company's position changed, I would let him know. At that time,

(Testimony of W. P. Powell.)

Mr. Nathan rose from his chair and said that that is all they wanted to know. I believe his exact words were "That is all we want to know."

And then Mr. White started to speak again, and Mr. Nathan sat down.

Mr. White said, "What kind of a closed shop will you agree to?" I answered that the closed shop provisions which had been submitted to the company thus far had not been acceptable. Mr. White handed me a written document and said, "Will you agree to section 2 in that proposal?"

Q. Did you know what that document purported to be?

A. I did not, when it was handed to me, but when I examined it I saw that it was articles of agreement as drawn up by the Retail Clerks' Union, Local 47, which is in Oakland, California; and I stated that we had not as yet met with the Retail Clerks in Oakland, and I was wondering about the value of discussing that particular section with regard to the Retail Clerks.

Mr. White said, "I want to discuss section 2 as it applies to the Warehousemen's Union in Portland which has been certified." I asked him for a minute to look over the section, which he said was perfectly all right, and when I had looked it over, I answered

[614]
that that provision was not acceptable for the same reasons that Article 2 in the Warehousemen's proposal was not acceptable.

And Mr. White said, "Is any part of it ac-

(Testimony of W. P. Powell.)

ceptable? I asked him if he wanted me to touch upon each paragraph separately, and he said, "Yes". It happened that the proposal was split up into five paragraphs which were lettered A, B, C, D, and E, I believe, and I took each paragraph,—

Q. May I interrupt? When you said that the proposal was divided into five sections, what did you mean by "proposals"?

A. By that I mean Section 2. We were discussing only Section 2, and that particular section was broken down into five sub-paragraphs, and we took each one up in order, and I explained why each one was not acceptable.

Q. Then what occurred, Mr. Powell?

A. Then Mr. White said, "If you are refusing to agree to Section 2 in that proposal, I will let you know right now that we are going to take strike action against Montgomery Ward." He said, "I will give you 24 hours to change your position", and then he stated that he would give us until Thursday, November 28, at noon, to change our position; and then he further said, "I warn you, you had better call up your Chicago office and have them change their position and agree to a signed contract containing Article 2 or we will take strike action immediately." [615]

He asked if I would telephone him before noon of Thursday, November 28, and I said I would rather,—yes, I said I would.

At that point, Mr. White and the other union

(Testimony of W. P. Powell.)

representatives rose from their chairs and left the office.

Trial Examiner Bokat: What was the conversation about the five paragraphs of Section 2?

A. Well, I am afraid that I would have to have the proposal before me before I could give an accurate statement as to that.

Trial Examiner Bokat: Did you accept any of the five?

The Witness: No, we did not.

Trial Examiner Bokat: All right.

The Witness: I might, by way of explanation say that Section 2 began with a sentence like this: "The employees shall be members of the Union and shall be employed in the manner following:" and then the five sections pointed out the provisions covering getting into touch with the Union in order to fill vacancies and so on.

Trial Examiner Bokat: I am not particularly interested in what the paragraphs stated, but merely in the results, because you testified that Mr. White took the position that, if you didn't agree to it, they would issue an ultimatum of some kind to take strike action; but you didn't indicate what your position was. I simply wanted to make the record clear on that point. [616]

The Witness: We did not accept any of them.

Trial Examiner Bokat: All right.

Q. (Mr. Ball) I hand you what has been marked as Respondent's Exhibit 1., which had been previ-

(Testimony of W. P. Powell.)

ously offered and rejected, and ask you if you know what that is?

A. Yes. It is a copy of the American Labor Citizen.

Q. Did that come into your hands about the date indicated at the heading of the paper?

A. Yes. It was addressed to me. I don't recall the exact date.

Q. Have you read the story about "Move on Montgomery Ward. Deadline all set."?

Mr. Walker: Just a moment. I apprehend that, subsequent to this question, the questions which follow may have to do with the contents of the article. I object to this question and to any other question along the same line that pertains to the article or the contents thereof, or the document.

The grounds of my objection are that the document and its contents are hearsay, incompetent, irrelevant and immaterial to any issues in this proceeding, and, furthermore, any statements which may be in there would not be binding upon any parties to this proceeding.

Trial Examiner Bokst: I will overrule the objection. I will let the question stand purely as a preliminary one.

Mr. Ball: Will you read the question, Mr. Reporter? [617]

(Thereupon the pending question was read aloud by the reporter as above recorded.)

Mr. Walker: Mr. Examiner, rather than inter-

(Testimony of W. P. Powell.)

pose an objection to each succeeding question, may it be understood that my objection runs to the entire line pertaining to the article or the contents of it, or to the instrument itself?

Trial Examiner Bokar: Well, of course, the instrument itself has been rejected, and I assume counsel is trying to lay another foundation.

I will, for the record, show that you are objecting to the entire line. I don't say that I am going to take the same position on each question that is asked.

A. Yes, I have.

Q. (Mr. Ball, continuing) Did you, on the same date that you received it, read the story?

A. Yes.

Q. And did you at that time understand that that referred to the meeting of November 25?

Mr. Walker: I will object to that as calling for a conclusion of the witness and a conclusion of law, asking the witness to express an opinion.

Trial Examiner Bokar: What is the date of the publication that you hold in your hand, Mr. Witness?

The Witness: The date is Friday, November 29.

Trial Examiner Bokar: All right. I will let you answer the [618] question. Read it back.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Yes, I did.

Q. (Mr. Ball, continuing) And did you under-

(Testimony of W. P. Powell.)

stand that the deadline referred to in this article was the deadline set by Mr. White in the meeting?

Mr. Walker: I will object to that on the ground that it assumes facts not in evidence, and asks for a conclusion of the witness.

Mr. Ball: I think that question is objectionable in form. Let me rephrase it.

Trial Examiner Bokar: All right.

Q. (Mr. Ball, continuing) Where that article refers to a deadline set by the A F of L against Montgomery Ward, did you understand that it referred to what Mr. White had said about the necessity of Montgomery Ward agreeing to a closed shop clause discussed in the meeting of November 25?

Mr. Walker: I will object to that on the ground that it is a leading question, and, furthermore, on the ground that it calls for a conclusion of the witness, and is incompetent, irrelevant and immaterial.

Trial Examiner Bokar: I think the objections so far have been technically well taken, but I will let him answer the question and see what develops. Overruled [619]

A. Yes. I might say the meeting of November 25 was the last meeting prior to the issuance of this paper.

Mr. Walker: I will object to that and move that the last portion of the answer be stricken.

Trial Examiner Bokar: Yes, strike the last part out as not responsive.

(Testimony of W. P. Powell.)

Q. (Mr. Ball, continuing) What is the fact as to whether or not you had subsequent meetings with Mr. White?

A. I did have subsequent meetings with Mr. White.

Q. What was the next meeting you had with Mr. White subsequent to your meeting of November 25?

Trial Examiner Bokar: You may refresh your recollection by any memorandum, if you so desire.

A. That is not contained in the memorandum that I have before me. I met with Mr. White on December 6, 1940.

Q. (Mr. Ball, continuing) What had occurred in the meantime?

A. On December 4, the Oakland mail order house and retail store were picketed.

Q. Did you have occasion to call Mr. White back on or about Thursday, the 28th?

A. Yes, I did.

Q. What did you tell Mr. White at that time?

A. I told Mr. White that the closed shop provisions which had been submitted to the company were not acceptable, and that the company's position had not changed. [620]

Q. What did Mr. White say at that time?

A. At that time, he said that he wanted to confer with other union leaders, and he would call me back that afternoon.

Q. Did you receive any call from Mr. White

(Testimony of W. P. Powell.)

prior to the time that you had your next meeting with him? A. No, I did not.

Q. What was the date on which the open house and store were picketed? A. December 4.

Q. Referring to Respondent's Exhibit 20, I call your attention to the last paragraph on the first page, in which you ask about some action that might be taken in the event the pickets were placed around the Oakland plant. Let me ask you whether the action was ever taken in accordance with your recommendation in that letter?

Mr. Walker: Just a minute. Will you read that question back?

Trial Examiner Bokst: Read it back, Mr. Nelson.

(Thereupon the pending question was read aloud by the reporter as above recorded.)

A. No, it was not.

Mr. Walker: Just a moment. I object to the question in form, including facts not in evidence. The instrument itself indicates the purpose, or the instrument indicates what the situation was that obtained at that time.

Trial Examiner Bokst: Of course, it is purely a collateral matter, going into the situation at the Oakland store, with which I am not concerned. As I understand Mr. Ball's position, he wants to clear up the record inasmuch as the letter is already in evidence, to show whether any action was taken in accordance with the recommendation.

(Testimony of W. P. Powell.)

Mr. Walker: I understand that, Mr. Examiner, but counsel, in framing his question, interjected a phrase that the inquiry in the letter referred to the Oakland plant, when, as a matter of fact, it seemed to be directed to the situation at the Portland plant.

Mr. Ball: It may be. Let the question be modified so that the witness could tell us whether or not any such action, as is suggested in that letter, was taken at Portland or Oakland or anywhere else.

Trial Examiner Bokat: All right.

A. So far as I know, no.

Q. (Mr. Ball, continuing) Do you recall why it was not taken?

Mr. Walker: That is immaterial.

Trial Examiner Bokat: Yes, he said it was not taken.

Mr. Ball: I offer to prove by this witness on direct examination that he was instructed not to take that action by the management in Chicago.

Mr. Walker: I have no objection to that.

Trial Examiner Bokat: If that is a fact. Are you willing to stipulate that the witness would so testify? [622]

Mr. Walker: Just exactly what counsel stated.

Q. (Mr. Ball, continuing) Do you recall meeting with Mr. White in Oakland in the company of Mr. John Barr?

A. Yes, I do.

Q. Do you recall when the meeting took place?

A. Well, there was more than one meeting.

(Testimony of W. P. Powell.)

Q. Well, when was the first meeting?

A. The first meeting was December 11.

Q. Do you recall whether any question arose at that meeting as to the extent of Mr. White's authority?

A. I don't think there was any question at that meeting; in fact, I know there was not.

Mr. Walker: May I ask that the record show that, with regard to the prior question asked the witness, I desire to request that he be directed to answer the question "yes" or "no".

Mr. Ball: I will withdraw the question. The answer may be stricken, if there was one.

Trial Examiner Bokat: All right.

Mr. Ball: At this time, I desire to re-offer Respondent's Exhibit No. 1.

Mr. Walker: To which I interpose the same objection as was made at the time of the original offer.

Trial Examiner Bokat: I am ready to rule. This paper appears to be the official paper or publication of the American Federation of Labor. [623]

There is no dispute about that?

Mr. Walker: No.

Trial Examiner Bokat: I will let it go in as proof of the fact that such an issue appeared containing the story. I am not accepting it as being the fact of everything contained therein. What influence the story had on the respondent is something else. I will say, with that limitation, I will

(Testimony of W. P. Powell.)

accept it in evidence, that is, that, on that particular day, an official publication of the American Federation of Labor issued, and in that particular issue, that article appeared directed against Montgomery Ward; but I will not accept it as proof of the facts stated in the story.

With that modification, I accept it in evidence as Respondent's Exhibit No. 1.

(Whereupon the document heretofore marked as Respondent's Exhibit No. 1 for identification was received in evidence.)

RESPONDENT'S EXHIBIT No. 1

American Labor Citizen

San Francisco, Friday, November 29, 1940

Move on Montgomery Ward

Deadline All Set

For Concerted Action

Against Unfair Company

Every Point of Operation

In Eleven Western States

To Feel Economic Pressure

Warehousemen, Clerks

and Teamsters All Set

for Drive Against

Anti-Labor Activities of

National Chain Store

(See Page 4)

San Francisco.—Deadline today! Montgomery Ward, national chain store labor-resisting corpora-

(Testimony of W. P. Powell.)

tion, if it continues its stalling tactics and refuses recognition of the unions in legitimate organizational effort, will feel the economic weight of the combined forces of the teamsters, warehousemen and retail clerks in every point of its operation in the eleven western states.

Teamster and clerk units in northern California have already moved against the company at Redding, Denver, Colo., Portland, Ore., and other points in the West are poised and ready to act against the company.

Complete Zero

Repeated conferences between a special committee of warehousemen, teamsters and retail clerks, representing all the units in the West, and the company officials have netted a complete zero, enhanced by empty phrases and wordy, meaningless conversation. Either the labor relation employes of the company have no power to give a final answer or they are following the usual stalling and procrastinating policy of the company throughout its entire operation.

T. A. White, secretary of the Western Warehouse Council, has been delegated by the committee to represent it with full power to act. One last conference is being held between White and the management of Montgomery Ward. Should this conference fail, as it is expected to, White will set the teletype into action and concerted movement will

(Testimony of W. P. Powell.)

take place against the company throughout its entire operation in the eleven western states.

Refuses Agreements

Despite clerk and warehousemen's majorities in many cities the company refuses to negotiate agreements. Company unions are fostered in some spots. Union organizing is generally discouraged in every locality where there is a Montgomery Ward store. The entire policy of the company is labor-resisting despite the fact that the bulk of the company's custom comes from the ranks of organized workers.

Another point of issue is the insistence of Montgomery Ward in handling nationally boycotted goods despite continual appeals by various unions not to do so. Particular case is their handling of Dixie Foundry Company of Cleveland, Tenn., stoves. The unions have succeeded in getting all retail establishments in the country to cease selling this boycotted merchandise and Montgomery Ward is the only influence that keeps the union from signing the unfair manufacturer.

"Montgomery Ward," Ted White said, "has been playing at merry-go-round with the warehousemen and clerks in their various cities. Heretofore they have been confronted with individual locals operating as separate units in their various jurisdictions. The whole history of the company in its labor relations has been very bad. So bad in fact that the AFL units of warehousemen, clerks and teamsters

(Testimony of W. P. Powell.)

were compelled to coordinate their efforts all over the West.

“No longer will these powerful national chain organizations be allowed to bully small local unions and hinder their legitimate efforts to organize. This is an issue that concerns us all in every point of operation and we intend to see it through to the finish.”

In addition to the direct economic action taken by the AFL affiliates in the West a publicity campaign urging all union members and their friends not to patronize this unfair firm is being instituted throughout the territory.

Special Flash!

Redding, Cal.—First shot fired here in huge eleven western states campaign against labor-resisting Montgomery Ward.

Anticipating further stalling and procrastination on the part of Montgomery Ward officials, George Salvo, secretary of Teamsters Union Local 137 here, announced strike, boycott and picket action in this city against both the Montgomery Ward warehouse and the Montgomery Ward retail store.

The warehouse serves the entire northern territory here up to the Oregon line. The men, loyal to the union, have left the plant, the teamsters are not hauling the labor-resisting chain store company's merchandise.

(Testimony of W. P. Powell.)

The retail clerks, Secretary William Weeks announced, have thrown a picket line around the company's retail store here.

Action took place at noon on Tuesday of this week and resulted from the company officials wilfully ignoring a time limit ultimatum.

"If the Montgomery Ward attitude in this Redding instance is an indication of the company's policy to be expressed at the Friday meeting in San Francisco, the joint union committee economic action in the eleven western states is inevitable," salvo said.

To Every Member and Friend of Organized Labor
in the Eleven Western States!

For the Preservation of the Very Principles and
Ideals of Organized Labor, It Is Important
That You

Do Not Patronize

Montgomery Ward

This National Chain Store Company Is Combatting
Legitimate Organizations in Practically Every
One of its Operations in the Entire West!

They refuse to recognize majorities of clerks or warehousemen.

They refuse to seriously discuss these majorities and decently negotiate with union official.

(Testimony of W. P. Powell.)

They are sanctioning "company unions" in many points of operation.

They discourage unionization among their employees.

They refuse to sign unionized contracts.

They refuse to officially notify their employees that they may join a union if they wish to.

Their entire labor relations policy is one of conciliatory delay, thereby giving positive evidence that they do not want unionization.

They handle nationally boycotted unfair merchandise, despite the fact that they have been repeatedly requested to cooperate with union workers who make up the bulk of their customers.

AFL warehousemen, teamsters, retail clerks, engineers and machinists are about to take action against this labor-biased unfair firm throughout its entire operation in the eleven western states.

Nearly every point of operation in the territory reports difficulty with this concern. Reports of this nature are at hand from Portland, Oregon; Tacoma, Washington; Los Angeles, Oakland, Fresno, Modesto, Redding, Santa Rosa, Petaluma, Marysville, Pittsburg and other California cities; from Denver, Colorado; from Nampa, Idaho, and elsewhere.

In justice to your fellow workers and for the preservation of your own union principles you

Must Not Patronize This Unfair Firm!

(Testimony of W. P. Powell.)

Q. (Mr. Ball, continuing) Now, do you recall a meeting, together with Mr. John Barr, and Mr. White, held in Oakland, at which meeting Mr. White inquired as to the existence of grievances; or, Mr. Barr inquired as to grievances?

Mr. Walker: I will object to that. I will object to that unless counsel fixes the time and the persons present.

Mr. Ball: I have fixed the persons present.

Mr. Walker: The time.

Q. (Mr. Ball, continuing) Will you in describing any such meeting, [624] fix the time and persons present?

Trial Examiner Bokat: All right.

A. At the meeting of December 11, attended by Mr. White, Mr. Hoskins, who is a Federal Conciliator, Mr. Barr and myself, the question of grievances was raised.

Q. What, if anything, did Mr. White say with respect to the existence of grievances?

Mr. Walker: I don't understand the materiality of this question of grievances arising. Certainly there is no allegation to the effect that Local 206 of the Retail Clerks has made any issue with respect to grievances in this proceeding.

A. Well, Mr. White said there were no complaints or grievances with regard to wages or the hours which the company had established.

Q. (Mr. Ball, continuing) And what did he state the issue was?

(Testimony of W. P. Powell.)

A. He said that the unions were interested in the closed shop and were insisting that the company agree to a closed shop.

Q. Mr. Powell, were you present when Mr. Estabrook testified in this case? A. I was.

Q. Do you recall that Mr. Estabrook asked you if you had the power to negotiate an agreement, and that you said, "I don't know; I guess so, that the Board of Directors would have to sign it." I will ask you if you made any statement of that kind whatsoever, and if so, what it was? [625]

A. No such statement was made to Mr. Estabrook.

Q. What is the fact as to whether or not the Board of Directors would have to sign any agreement?

A. So far as I know, I don't think that they would.

Q. You have never been so instructed?

A. That is right; I have never been so instructed, and I never so stated. I might state that Mr. Estabrook did ask that question, and I told him I had authority to negotiate with him. But I didn't say, "I don't know; I guess so".

Trial Examiner Bokar: Did he ask you whether you had authority to sign a contract, or who had authority to sign a contract?

The Witness: That question was raised, and I

(Testimony of W. P. Powell.)

don't recall if Mr. Estabrook was the person who put the question to me.

Trial Examiner Bokat: Regardless of who put it to you, what was your reply, if any?

The Witness: That I told him,—I told him that I would not sign the contract, but that the Local Manager would be the one to sign the contract. Rather, I will put it this way: I told him that I didn't believe I would sign the contract, but I thought the local manager would be the one to sign the contract.

Q. (Mr. Ball, continuing) Do you recall off-hand at what meeting the question and answer occurred?

Trial Examiner Bokat: I don't think that makes any difference. [626]

The Witness: In fact, I am sure it was at the meetings of December 14 or 16; either one of them.

Trial Examiner Bokat: All right.

Q. (Mr. Ball, continuing) Were you present in the court room when Mr. Holmes testified in this case? A. Yes, I was.

Q. Do you recall if Mr. Holmes testified that at the meeting of November 25, Mr. White asked you who had the power to execute an agreement, if such was reached, and you answered that the Board of Directors would sign the agreement? Now, in fact, was any such question put to you by Mr. White, and did you make such an answer?

(Testimony of W. P. Powell.)

A. Such a question was put to me, but I did not make that answer.

Q. What answer did you make at that meeting?

A. I said that I was not sure who would sign an agreement, that I didn't think it would be me, and it was my opinion that it would be the local manager. I pointed out that the question had not been reached in our negotiations.

Q. In connection with the meeting, or one of the meetings to which Mr. Holmes testified, he stated that you were asked whether the wage scale which you had listed in connection with the Warehousemen's proposed contract was the wage scale that was being paid, and you said that in some cases it was less. Did you make any such statement to the effect that in some [627] cases it was less, to Mr. Holmes, or at that meeting, or at any time?

A. No, I did not.

Q. What, in fact, was the statement you made about wages, or the figures that you mentioned in connection with the discussion of wage scales submitted in the Warehousemen's contract?

A. At that meeting of November 12 with Mr. Estabrook and Mr. Holmes, when we reached the section covering wages, I stated that the company could not agree to the demands which they had presented in their proposal, and Mr. Estabrook asked what wages we could agree to, and I read off to him for each classification listed a minimum hourly rate

(Testimony of W. P. Powell.)

which would be acceptable to the company as a matter of agreement.

Q. And did you say that was less than was being paid?

A. No; I said that was the minimum, and, in many cases,—a great many cases,—the hourly rate was higher.

Trial Examiner Bokat: Let me see if I understand that answer clearly. Are you referring to the scale of wages then being paid at the Portland Store?

The Witness: In answer to that last question, yes. That is, the hourly rates which I read to Mr. Estabrook were those wages which would be acceptable to the company, as a matter of agreement.

Trial Examiner Bokat: But they represented minimum rates on [628] the whole that were then being paid to the Warehousemen then in your Portland store?

The Witness: That is true.

Trial Examiner Bokat: All right.

Q. (Mr. Ball, continuing) Do you recall of Mr. Holmes testifying that at the meeting of December 16, Mr. Estabrook asked you if you would sign, or the company would sign, an agreement with the same wages, hours and working conditions as has been in effect prior to the strike; and that you said "no"? [628A]

What is the fact as to whether or not that question and answer were made?

(Testimony of W. P. Powell.)

Trial Examiner Bokar: Will you read the question back, Mr. Nelson?

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. That question was not asked by Mr. Estabrook.

Q. Was that question asked by anyone else at that meeting? A. Yes, it was.

Q. What occurred at that time?

A. The question was asked by Mr. Allen, and I said to him that the question as to the signing of an agreement was one which had not been reached in our negotiations thus far, and therefore, I felt it was premature.

At that point, Mr. Denecke asked Mr. Allen if the unions would be willing to accept such a proposal, and Mr. Allen said "no", and I said to Mr. Allen, "Well, then, isn't your question a hypothetical one?" And he said, "yes". And I suggested that it would not be advisable or would not accomplish anything to discuss a hypothetical question.

Q. Were you present when Mr. Dixon testified in this case? A. Yes.

Q. Do you recall that he testified that on the meeting of September 19, he asked you whether, if an agreement were reached with his union, you were in a position to sign a [629] contract or an agreement, and you said to him that the company did not sign agreements. Now, was that question asked, and, did you make such an answer?

(Testimony of W. P. Powell.)

A. Such a question was asked, but I did not give that answer.

Q. What answer did you give?

A. I said, so far as I knew at that time, I didn't know of any contract in existence between the company and labor organizations.

Q. Did you at any time during the course of the negotiations with relation to the Portland retail and mail order house, make any statement that the company would not sign a written contract?

A. No, I did not.

Q. During the fall of 1940, was your time exclusively employed in labor relations?

A. No, it was not.

Q. What is the fact as to whether or not you were busy during that time?

A. I was very busy.

Q. And were you or were you not located during most of that time in Oakland?

Mr. Walker: I don't see the materiality of this, whether he was busy or not, or whether he was leisurely occupied. It certainly has no bearing on any of the issues.

Trial Examiner Bokat: I understand. It may have something to do with the statement of the Board's witnesses about their [630] inability to get in touch with Mr. Powell.

Mr. Ball: That is it.

Trial Examiner Bokat: All right.

A. I was traveling up and down the Coast quite

(Testimony of W. P. Powell.)

a bit of the time, but the majority of my time was spent in Oakland.

Q. (Mr. Ball, continuing) Did Mr. Estabrook at any time ask you whether the Company would sign an open shop contract with the status quo?

A. No.

Q. Did anybody ask you about signing an open shop contract?

A. It was not asked in that language.

Q. What kind of a question, or what question of similar import was asked, and by whom?

A. Mr. Landye at the meeting of December 13 asked this: as to whether or not, if the closed shop provision were removed from the Warehousemen's proposal, would the company agree to the remaining provisions.

Q. And what did you say?

A. I said that the company had substantial objections to certain other provisions and therefore could not agree to all the remaining provisions.

Trial Examiner Bokat: Off the record.

(Discussion off the record)

(Thereupon a document was marked as Respondent's Exhibit 25 for identification.) [631]

Mr. Ball: I offer in evidence Respondent's Exhibit 25, being a clipping from the San Francisco Chronicle, December 22, for the purpose of showing the newspaper publicity and the background of the discussions that occurred at that time.

(Testimony of W. P. Powell.)

Trial Examiner Bokar: I stated off the record that I would accept it merely as evidence of the fact that this particular article came to the attention of the respondent, and not as proof of the facts contained therein.

(Whereupon the document heretofore marked as Respondent's Exhibit 25 for identification was received in evidence.)

San Francisco Chronicle

Dec. 2, 1940

AFL WILL MAP CHAIN STORE PLANS

Plans for obtaining labor agreements in Montgomery Ward stores in 11 Western States will be mapped at a Los Angeles meeting today of officials of the AFL.

The meeting will be held at the offices of the Joint Council of Teamsters. Dave Beck, vice president of the International Brotherhood of Teamsters, is expected to attend.

Chairman of the co-ordinating committee of the unions involved is T. A. White, AFL warehouse leader. AFL officials claim the company has refused to discuss labor relations with the union "despite union majorities in many stores."

Q. (Mr. Ball, continuing) Do you recall, Mr. Powell, having a meeting in Oakland on December

(Testimony of W. P. Powell.)

6, at which time you discussed the situation at Portland with Mr. White? A. Yes.

Q. And what was Mr. White's statement about action at Portland during that meeting?

A. Mr. White said this, that he felt that we were making some progress in our negotiations at Oakland, and that as long as our negotiations progressed satisfactorily, he would see that no action was taken at Portland. He said he would communicate with Mr. Estabrook and instruct him to withhold any contemplated action in Portland. Mr. White gave that assurance to myself and to the Federal Conciliator, Mr. Hoskins.

Q. What is the fact as to whether or not the Portland house was [632] then closed, or was struck on the following day, December 7?

Trial Examiner Bokar: It is so stipulated.

Q. (Mr. Ball, continuing) Did you meet again with Mr. White on the following day, December 7?

A. Yes, we did.

Q. And what explanation did he give of the fact that the Portland house had been struck that morning?

A. Mr. White said that the Portland house had been struck by the Retail Clerks; that he had had authority to act for the Retail Clerks, but he no longer had that authority, and that the action which had been taken was out of his control.

Mr. Ball: Your witness.

Trial Examiner Bokar: Mr. Ball, in order to

(Testimony of W. P. Powell.)

clarify the record, I understand that you are not going to question this witness concerning other meetings, because this witness' testimony as to what took place, as stated therein, would be substantially the same, or exactly the same as it is reported to Mr. Barr, and, for the purpose of saving time, you are not asking him to testify orally to that?

Mr. Ball: That is right.

I will state that, if the specific questions were asked him on direct examination, he would testify substantially as is stated in the exhibit.

Trial Examiner Bokar: And the things stated therein did take place, as so reported? [633]

Mr. Ball: Yes, and that the article states what took place at those meetings.

Trial Examiner Bokar: All right, you may cross examine.

Cross Examination

Q. (Mr. Walker) Mr. Powell, since September, 1938, you have undertaken labor relations for Montgomery Ward?

A. No, I wouldn't say; but I said I have been familiar with the labor relations problems of the company since that time.

Q. What do you mean by that?

A. The question was asked, and I was just repeating the question, or the answer to the question I gave.

Q. Well, how do you mean? In what sense had

(Testimony of W. P. Powell.)

you become familiar with them? In an official capacity?

A. Well, I will answer your question this way, that I was not at that time taking an active part in collective bargaining with representatives of our employees.

Q. I understand that. Have you, affirmatively; in what manner did you become familiar with the labor relations of Montgomery Ward?

A. I don't believe that I understand your question.

Mr. Ball: I suggest that you simply ask Mr. Powell something about the first problems that he handled in labor relations for Ward's, the course of his experience in those matters, and so on.

Trial Examiner Bokat: I don't think that it is necessary [634] to go into all that.

Mr. Walker: No.

Trial Examiner Bokat: I assume that you learned by discussions with other officials, rumor and hearsay, something of the problems of the company with regard to its labor relations with its employees; is that correct?

The Witness: Yes.

Trial Examiner Bokat: Is that satisfactory?

Mr. Walker: That is satisfactory.

Trial Examiner Bokat: All right.

Q. (Mr. Walker, continuing) And since that time, and particularly since August, 1940, you have

(Testimony of W. P. Powell.)

actively undertaken matters relating to labor relations?

A. I took an active part prior to that time, but that was the date I came to the Coast.

Q. During all the time you have taken an active part, you have, in the meantime, acquired considerable experience, have you not?

A. I have acquired some experience, yes.

Q. In your official capacity, you have had occasion to converse with Mr. Barr,—John A. Barr?

A. Yes.

Q. You have met him and made contact with other officials of the company with relation to labor relations problems, and, during the course of your experience, have become familiar with [635] the philosophy or theory or attitude or policy of the company relative to labor relations; have you?

A. That is correct.

Q. All right, let us call it “philosophy” so that we may understand.

A. You can call it anything you want to call it.

Trial Examiner Bokat: As long as we understand it.

Mr. Walker: That is right, as long as we understand it.

Trial Examiner Bokat: All right.

Q. (Mr. Walker, continuing) And the philosophy expressed by Mr. Barr has been transmitted to you by way of instructions from him, is that correct?

A. That is correct.

Q. And upon receipt of those instructions, have

(Testimony of W. P. Powell.)

you endeavored to transmit them into action whenever you have had occasion to meet with representatives of organized labor; is that correct?

A. I have endeavored to follow Mr. Barr's instructions.

Q. Now, I gather from your testimony,—in the event I have misunderstood you, I wish that you would correct me,—it has been your practice in meeting with representatives of organized labor, particularly concerning the Portland situation, to receive proposed written agreements from labor organizations?

A. I wouldn't say that has been our practice. I would say that is the way the majority of the bargaining sessions were [636] conducted.

Q. Well, in short, if a proposed contract is delivered to you, you accept it as such, do you not?

Mr. Ball: Do you mean accept the contract, or accept it as a basis of bargaining?

Mr. Walker: As a proposed contract.

A. Do you mean, are we willing to go into negotiations with respect to that contract?

Q. (Mr. Walker) I mean, you accept the receipt or accept the delivery of the proposed contract? Naturally, that is the first thing that happens?

Mr. Ball: You mean, he does not accept the contract as such?

A. If a proposal is received, I accept the receipt of it, yes.

Q. (Mr. Walker, continuing) So that we will

(Testimony of W. P. Powell.)

Understand it, I am not attempting to put any questions to you for the purpose of confusing you or misleading you. A. I understand.

Q. I am simply asking you questions in order that I may have a more thorough understanding of your testimony. A. All right.

Q. Now, after the form of agreement has been received by you, a meeting is arranged for; is that correct? A. Yes.

Q. And at that meeting, if the representatives of the Union [637] suggest, the contract is then discussed, clause by clause?

A. Yes, that has been done.

Q. It is your instruction not to agree upon any clause? A. No; that is wrong.

Q. Well, will you straighten me out on that?

A. How do you want to be straightened out?

Q. I don't know.

A. Well, I don't know either.

Q. Well, wherein is my statement wrong?

A. You stated that your understanding of my instructions was that I should not agree with any clause.

Q. As such?

A. Well, now, I am not sure I understand your question.

Mr. Walker: Out of the ambiguity of words.

Mr. Ball: We have an exhibit in here which contains Mr. Barr's instructions, and I think we will

(Testimony of W. P. Powell.)

agree that Mr. Powell received them and carried them out.

Trial Examiner Bokat: There is no doubt about his receiving them, and he has testified that he carried out the instructions.

Mr. Ball: I don't want to interrupt. I thought it might shorten things.

Q. (Mr. Walker, continuing) I call your attention to paragraph 3 of the second page of the letter dated November 22, written by John A. Barr, received in evidence as Respondent's Exhibit No. 18. Do you see that? [638]

A. Yes.

Q. Will you read it?

A. I don't think I need to.

Q. Well, let us refer specifically to this statement there: "But do not agree to such a clause."

A. I think I understand your question now.

Q. All right, will you answer it?

A. You are referring to Mr. Barr's testimony in which he stated that agreement to a contract is an agreement in its entirety.

Q. Now, by withholding agreement to any one clause, will you explain how it is possible to arrive at a collective bargaining agreement?

A. Why, yes. I might illustrate, to use your question: if, say, there are ten provisions of a proposal and I withhold agreement as to five of those provisions, agreement might be reached on the other five.

(Testimony of W. P. Powell.)

Q. How?

A. Isn't it possible to reach an agreement on the other five provisions?

Q. That is what I wanted to know.

A. If the parties so desired.

Q. That is what I wanted to know, how it is possible when you don't agree to such clauses: "In discussing individual clauses, do not agree to such clauses." How is it possible?

A. Well, I have stated to you how it is possible. If the Company objects to certain provisions of a proposal, and does [639] not object to the others, certainly it seems possible that an agreement can be reached on those to which the company does not object. I believe you understand Mr. Barr's point there.

Q. I am frank to say I don't, and that is why I asked you to explain.

A. The reason an objection is made, or not objection is made to a particular provision rather than that we agree to that provision is that, during the course of negotiations as we come upon later sections of a particular proposal, the discussion might take such a turn which would lead the negotiator to change his position on a previous provision which had been discussed.

Q. Well, now, let us go back to the word "agreement". If you agreed to that particular clause, then that clause must apparently be acceptable to the union or they would not have advanced it, isn't that correct?

A. I presume so.

(Testimony of W. P. Powell.)

Mr. Ball: I will object to that because it assumes a fact which is not in evidence, because the union might propose a number of clauses to which they do not object, that is, if written into the contract as a whole, as proposed, and yet they might object to signing a contract containing those particular clauses and not the others.

Q. (Mr. Walker, continuing) Was the statement of counsel a fact? [640]

Trial Examiner Bokat: Do you agree to that?

Mr. Ball: They may accept certain clauses in a contract but would not be willing to accept just those clauses in a contract as a final contract, without the others.

Mr. Walker: That is what I had in mind. Do you understand it that way?

The Witness. Yes.

Q. (Mr. Walker, continuing) Now, how do you expect a contract to be reached with a labor organization by agreeing with only five submitted clauses out of the ten, as you expressed it?

A. How do I expect it?

Q. Yes.

A. My opinion is that it could be done.

Q. Oh.

A. You are asking for my opinion.

Q. In other words, it is within the realm of possibility?

A. You are asking how I expect it could be done; in other words, I expect it could be done.

(Testimony of W. P. Powell.)

Mr. Ball. I will object to that question, if it is within the realm of possibility.

Trial Examiner Bokat: That is obvious.

The Witness: I would say it was within the realm of probability.

Trial Examiner Bokat: I don't want to get into the realm of metaphysics. [641]

Mr. Ball: I was afraid we were, and that is why I interjected my objection.

Q. (Mr. Walker, continuing) You have been instructed not to take the initiative in bargaining, is that correct?

A. Yes, that is correct. I have been instructed that the company has no demands to make upon a labor organization, and therefore we have no reason to go to them with any requests.

Q. In other words, the duty lies with the union to keep coming back and keep coming back and keep submitting proposals to the company?

Mr. Ball: I will object to the use of the word "duty". As I observe, that involves another of these metaphysical distinctions.

Trial Examiner Bokat: Well, ask him the question with the omission of the word "duty". Suppose you use the word "burden", if that is acceptable.

Mr. Walker: That is all right.

Trial Examiner Bokat: If you want to use the word "burden", that the burden was upon the company to come back with proposals—that the burden

(Testimony of W. P. Powell.)

was upon the union to come back with proposals, perhaps that would be better.

Mr. Walker: All right.

Trial Examiner Bokat: All right. Off the record.

(Discussion off the record.)

Mr. Walker: Do you understand the question now? [642]

The Witness: Will you repeat it, please?

Trial Examiner Bokat: I suggest that you reframe it. You conceive it to be the burden of the Union to keep submitting demands until they meet with the approval of the company?

Mr. Ball: Let me interpose an objection even to the word "burden". I don't know whether it is a burden or whether it is not a burden. It is something that I assume would be voluntarily assumed as such.

Trial Examiner Bokat: I am just trying to carry out Mr. Walker's idea.

Mr. Ball: May I suggest that we inquire whether Mr. Powell's concept of the ordinary processes of bargaining would be that a union would present demands and then reframe them until the situation was clarified.

Trial Examiner Bokat: I assume that is your position. Is that correct, as stated by Mr. Ball?

The Witness: That is the process of bargaining as stated which has been followed here in Portland, yes.

Trial Examiner Bokat: In other words, as I

(Testimony of W. P. Powell.)

see it, Mr. Powell, you have proceeded on the theory, so far as you are concerned, if you reject a particular proposal, that ends the matter until and unless the Union submits some modification of that proposal to be considered anew by you?

The Witness: I wouldn't say that is entirely correct. [643]

Trial Examiner Bokar: Well, in what way is it not entirely correct?

The Witness: I would say that there are certain provisions of proposals which have been submitted to which the company has a substantial objection, such as a closed shop, to which I cannot conceive of any modification which the union could come forward to present. There are other provisions where it is a question of wording, and that wording has been suggested during the course of the bargaining sessions.

Trial Examiner Bokar: You might state that the company would accept those particular provisions, or, let us confine it to one provision, would accept that particular provision with elimination of a certain word, or have it reworded in a particular way, such as suggested; is that what you mean?

The Witness: It has been stated in a number of ways, that any provisions, if it is worded thus and so, it would be acceptable to the company.

Mr. Ball: Let me submit that the story of the bargaining sessions shows that that has been done.

(Testimony of W. P. Powell.)

Trial Examiner Bokat: Very well, Mr. Ball. Particularly in the testimony of Mr. Langford.

Q. (Mr. Walker, continuing) On any of the clauses, or on any of the agreements submitted by any of the unions to the company, did you express to the representatives of the Union the position of the company in any manner other than as a restatement of [644] position concerning wages, hours and working conditions as had been pertaining?

A. I am afraid I will have to have that question read. It is rather long.

(Thereupon the question was read aloud by the reporter as hereinabove recorded.)

A. I would have to know what specific provisions you are talking about.

Q. All right, we will do that.

Trial Examiner Bokat: Off the record.

(Discussion off the record.)

A. There were not any concessions of major importance; there were, I would say, some minor concessions.

Q. Who first gave you a copy of the Warehousemen's proposed contract or agreement?

A. I received a copy from Mr. Huddleston in the mail.

Mr. Ball: We can stipulate the date in a minute.

Q. (Mr. Walker, continuing) Did you later receive one personally from the Warehousemen's representative?

A. No. When I came up to Portland to meet

(Testimony of W. P. Powell.)

with the union representatives, Mr. Estabrook and Mr. Holmes, I obtained from Mr. Huddleston the copy that he had received from Mr. Estabrook, which we used as the working copy.

Mr. Ball: I will stipulate the date if you want to, on that.

Q. (Mr. Walker, continuing) Now, in the meetings in December [645] in Portland, either Mr. Estabrook or Mr. Holmes made some statement to the effect that they were willing to recede from an absolute insistence on a closed shop provision appearing in any contract, isn't that correct?

A. No, they did not. Mr. Estabrook in the meeting of December 16, when we opened that meeting, suggested that we go through the Warehousemen's proposal section by section. I pointed out to Mr. Estabrook that we had gone through the Warehousemen's proposal before, and I was wondering if his union's position on the closed shop was still the same.

I said, if it was, I wondered as to the advisability of discussing the remaining provisions, and Mr. Estabrook said that he would not withdraw the closed shop demand; in fact, he could not. He said that the only way that the closed shop demand could be withdrawn would be by a vote of the membership, and when I asked him if that was a possibility, he said it was; he said that the membership might at some later date vote to withdraw the demands for a closed shop.

(Testimony of W. P. Powell.)

Q. Didn't they indicate to you that through the process of bargaining the Warehousemen were not insisting on a closed shop? A. No.

Q. Have you any memoranda on your meetings with Mr. White? A. Yes, I do.

Q. Here with you?

A. No, I don't have them here with me. [646]

Q. Where are they?

A. They are in Oakland. You see, the meetings with Mr. White all were in Oakland.

Mr. Ball: Off the record?

Trial Examiner Bokat: Off the record.

(Discussion off the record.)

Q. (Mr. Walker, continuing) Mr. Powell, in your answer concerning whether or not you had authority to sign an agreement, you seemed a little uncertain as to who would have that authority. Do you know?

A. I can explain that, Mr. Walker. That point had not been reached in any particular negotiations, either here in Portland or for that matter, anywhere on the Coast; and, by that, I mean the question as to *would* sign a contract on behalf of the company, that question had not been reached; in fact, it had not been approached in the negotiations, and that was the reason for my hesitancy in saying exactly who, because that question would be decided at the time it was reached in the negotiations.

I said I presumed it would be the local manager.

Q. The unions, however, did want to know

(Testimony of W. P. Powell.)

whether they were dealing with anybody with whom they could ultimately reach an agreement, isn't that correct?

Mr. Ball: I object to the union's belief about these matters, and the relevancy of that belief. [647]

Mr. Walker: I am not asking about the Union's belief; I am asking about his belief.

Trial Examiner Bokat: I think you have gone into it, have you not, Mr. Walker?

Mr. Walker: As a matter of fact, that question has never been decided yet, has it?

The Witness: What is the question?

Mr. Walker: Who would sign a contract.

A. So far as the Portland situation is concerned, no; to my knowledge, it has not been decided.

Q. (Mr. Walker, continuing) I call your attention to your testimony in which you told Mr. Allen it was premature to determine whether an agreement could be reached which embodied working conditions, wages and hours obtaining at the plant prior to the strike. Will you explain a situation in which such a question is premature?

A. Well, in answer to Ar. Allen's question, I used the word "premature" with regard to signing a contract, because, in his question, he asked if the company would sign a contract covering those matters, and I pointed out that the question of the signing of a form of contract was premature at that time, and we felt that unless an agreement had been reached between the parties on substan-

(Testimony of W. P. Powell.)

tially all the provisions, or upon a substantial number of provisions, then was the time to consider the question as to the form of the agreement. [648]

Q. An agreement over hours, wages and working conditions then obtaining at the operations, wouldn't you say that was substantial?

A. Well, there was no agreement on this point, or on those practices. As I stated, Mr. Allen said the question was a hypothetical one.

Q. Did you report that matter to Mr. Barr?

A. I reported that meeting.

Q. Mr. Powell, who makes the quarterly "wage survey" that you have described?

A. The personnel manager.

Q. And does that cover anything other than those employees engaged at the Portland operation?

A. Well, it is a practice that is done throughout the country and here at Portland; it covers only, in this instance, the employees at Portland. Is that what you mean?

Q. Does it cover any other factors other than the wages of employees at Portland?

A. What do you mean by "other factors"?

Trial Examiner Bokar: Does it cover salaries paid by other concerns, by concerns doing business similar to that of Montgomery Ward?"

The Witness: Yes, and I believe I stated that.

Trial Examiner Bokar. I don't know whether Mr. Walker intended that, but that is what I want to know. [649]

(Testimony of W. P. Powell.)

Mr. Walker: That is precisely what I intended.

Trial Examiner Bokar: All right. You say it does?

The Witness: Yes.

Q. (Mr. Walker) Who makes the surveys of the other firms operating in the Portland area?

A. As I understand the survey,—and that is what is told to me by Mr. Glassley, who explained the procedure to me,—there is an interchange of correspondence between employers, which enables employers to know what rates are established at various business houses and establishments in Portland, and it is done to compare rates on comparable jobs.

Q. For instance, relative to the warehousing at Montgomery Ward, a survey is made of the wages paid by other warehousing firms in Portland, is that correct? A. That is correct.

Mr. Walker: I believe that is all.

Trial Examiner Bokar: Do you have those figures, Mr. Powell.

The Witness: Yes, I have them, but not here.

Trial Examiner Bokar: Did you have those figures before you at the time that you went into negotiations with the Warehousemen's Union, or before you went into the negotiations?

The Witness: I looked at them before we entered into the negotiations.

Trial Examiner Bokar: But after you had seen the proposed contract? [650]

(Testimony of W. P. Powell.)

The Witness: Yes, after I had seen the proposed contract, and before we entered into the negotiations.

Trial Examiner Bokat: You had examined the survey?

The Witness: Yes.

Trial Examiner Bokat: What did you find?

The Witness: Well,—

Trial Examiner Bokat: Of course, I realize that you haven't the figures here and you will have to depend on your recollection.

The Witness: Mr. Glassley pointed out the comparisons in wage rates to me.

Trial Examiner Bokat: I am referring now to the Warehousemen for example.

The Witness: I don't recall the Warehousemen specifically.

Trial Examiner Bokat: What have you in mind, now?

The Witness: The entire personnel of the mail order house on job classifications. That is the way the survey was taken. The rates are listed as to all job classifications.

Mr. Ball: Let me point out to say that our job classifications are not analogous to the certification classification of the Warehousemen's Union, Mr. Examiner.

Trial Examiner Bokat: I just wanted to know if Mr. Glassley knew what wage scales were paid to other employees in similar classifications, regardless of what they are called.

(Testimony of W. P. Powell.)

The Witness: I largely relied on Mr. Glassley.

Trial Examiner Bokat: There is no question about that. And [651] he assured you what?

A. He assured me that the company wage policy was being followed.

Trial Examiner Bokat: You mean he assured you that the company was paying as high wages as other concerns in Portland, Oregon, or in the Portland area?

The Witness: He gave me that assurance, and he illustrated that by,——

Trial Examiner Bokat: Giving you some examples?

The Witness: Yes.

Trial Examiner Bokat: All right.

Q. (Mr. Walker, continuing) What examples did he show you? Did he refer to the mail order section?

A. That is right.

Q. And did that include Warehousemen?

A. Yes, it did.

Q. What do you recall now was the showing relative to warehousemen?

A. I don't recall specifically.

Q. Well, was your rate on warehousemen the same as other firms were paying for warehousemen in Portland, or better or less?

A. As I recall, it was either equal or better.

Trial Examiner Bokat: There was some dispute about that during the bargaining negotiations, whether or not that was a fact? [652]

(Testimony of W. P. Powell.)

The Witness: Yes, there was, and I might say, too, in answer to Mr. Walker, further, when he speaks of warehousemen that includes a number of job classifications. I don't recall right now whether each one of those job classifications was actually better than any comparable rate in the city.

Trial Examiner Bokar: I believe we had some testimony by Mr. Estabrook that he disputed the figures gathered by you, or at least your representation that the respondent was paying equal or better wages than other concerns in the City of Portland who employed warehousemen, or who employed people who fell within the classification of "Warehousemen", as contended for by the union.

The Witness: Well, Mr. Estabrook did state that he thought we were not paying as much as the others. He didn't make a point of it, if that is what you mean.

Mr. Walker: I think that is all. Just one more question.

Trial Examiner Bokar: All right.

Mr. Walker: Never mind; that is all.

Trial Examiner Bokar: If you want to add to your last answer, Mr. Powell, you may do so.

The Witness: Yes. As I understand his question, I was wondering if he was referring to the meetings prior to the strike, or the meetings after the strike was called. I think that might be important.

(Testimony of W. P. Powell.)

Trial Examiner Bokat: Why? Had the wage situation changed? [653]

The Witness: No, but the fact that you asked me if Mr. Estabrook stated we were not paying as high wages.

Trial Examiner Bokat: I don't know whether he made the statement before or after. I was not so particularly concerned as to when he made it, but whether he did make it.

The Witness: Well, he did make it at one of the meetings after the strike was called.

Trial Examiner Bokat: Any redirect?

Redirect Examination

Q. (Mr. Ball) Are we a member of any Employers' Association in Portland?

A. No, we are not, to my knowledge.

Q. And did you at the meetings subsequent to the strike foreclose Mr. Estabrook's opportunity to prove the fact that our wage scale was not comparable?

A. No, I did not.

Mr. Ball: That is all.

Trial Examiner Bokat: You are excused.

(Witness excused)

Mr. Ball: The respondent rests.

Trial Examiner Bokat: The respondent has rested. And I assume the Board will rest without any rebuttal?

Mr. Walker: We will have two witnesses. Very short witnesses.

Trial Examiner Bokat: I will state that I have not as yet read the exchange of correspondence between Mr. Powell and Mr. [654] Barr, and I want to check my notes before we close, to be sure that everything is before me, so that I can make a determination of the issues without finding something missing. So I will declare a recess now of half an hour, and then we will come back and resume after that time.

I now declare a recess for half an hour.

(Whereupon, at this time a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Bokat: The hearing is now in session.

Mr. Ball: It is stipulated between the parties that the strike in Sears Roebuck at Seattle, which has been referred to in this hearing, occurred on November 19 and November 20.

Trial Examiner Bokat: 1940?

Mr. Ball: 1940.

Mr. Walker: I will agree to that, but, for the purpose of the record, I want it understood by consenting to the stipulation. I am not admitting the materiality of that matter.

Trial Examiner Bokat: All right, call your witness.

J. W. ESTABROOK

previously sworn, was recalled as a witness by and on behalf of the Board, and further testified as follows:

Trial Examiner Bokar: You are now being recalled as a witness for the Board. You have been previously sworn. Your name is what?

The Witness: J. W. Estabrook. [655]

Direct Examination

Q. (Mr. Walker) There has been some testimony in the record to the effect that, at a meeting in either Oakland or San Francisco at which you were present, a meeting with Mr. Powell, Mr. White also being there, Mr. White said that unless the company agreed to a closed shop in Portland, the Warehousemen would strike Montgomery Ward in the eleven western states. What is the fact as to whether or not that statement was made?

A. I never heard that statement.

Q. There has been also some testimony that at that same meeting Mr. White also stated that all he had to do was to send a teletype and call the men, and that is "just what we will do". What is the fact as to whether or not that statement was made?

A. I never heard that one, either.

Q. At any of your meetings with Mr. Powell, was the statement made by Mr. Powell that the wages paid to the warehousemen by Montgomery Ward in Portland were equal to or better than the

(Testimony of J. W. Estabrook.)

wages paid to other warehousemen in the Portland area?

A. I have heard Mr. Powell make that statement, yes.

Q. Was there anything said by Local 206 to that matter? A. Yes.

Q. What?

A. We didn't quite agree with him.

Mr. Ball: I move to strike the answer that the Union didn't agree with Mr. Powell's statement as not tending to prove or [656] disprove any issue in this case.

Trial Examiner Bokat: You are referring to the answer and not the question?

Mr. Ball: Let the record show that I am including both the question and the answer, and, that I would like to have this objection be shown as preceding the answer.

Trial Examiner Bokat: I will let the question be answered if the witness will state what was said in reply to the statement made by Mr. Powell.

The Witness: Mr. Powell made the statement that Montgomery Ward in Portland were paying as much as anyone else for the same type of work in Portland. I, myself, disagreed with him and told Mr. Powell that he was paying considerably less than people in the same type of business were paying.

Mr. Ball: I move to strike that for the same reason.

(Testimony of J. W. Estabrook.)

Trial Examiner Bokat: The motion is denied.

Q. (Mr. Walker, continuing) Did you give any specific reference or example showing wherein there was a difference between the wages paid by Montgomery Ward and other firms for the same kind of work? A. Yes, I did.

Mr. Ball: Just a moment. I move to strike that. I also want to have the objection shown before the answer of the witness. I move to strike that as having already been gone into by the same witness.

[657]

Trial Examiner Bokat: I will agree with that, but I will let him amplify it, if he thinks that it is necessary.

Mr. Ball: For the further reason that it is immaterial to any of the issues in this case.

Trial Examiner Bokat: I will let it stand.

Mr. Walker: Mr. Nelson, will you read the question to the witness?

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Yes, I did.

Q. (Mr. Walker, continuing) What examples did you point out to him?

Trial Examiner Bokat: Your objection runs to the entire line, Mr. Ball?

Mr. Ball: Yes, if the Examiner please.

The Witness: Shall I answer the question?

Trial Examiner Bokat: Yes.

A. Meier & Frank, Roberts Brothers, Sears Roe-

(Testimony of J. W. Estabrook.)

buck, Honeyman Hardware; all of the wholesale plumbing concerns.

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Ball) Mr. Estabrook, how long did this meeting of November 25 at Oakland last? Do you recall?

A. Oh, quite a while; the biggest part of the afternoon.

Q. And this meeting did follow the formation of the committee [658] to which you testified in your direct examination, the committee to organize Montgomery Ward in the eleven western states?

A. I can't answer that "yes" or "no".

Q. Now, Mr. White, who has been mentioned as the spokesman for the entire meeting,—he was the spokesman for the entire meeting, was he not?

A. I don't think so. He led off and started the conversation. He certainly wasn't speaking for me.

Q. As a matter of fact, he probably did more talking at the meeting than anyone else, including yourself?

A. I think it was about even.

Q. You did quite a bit of talking?

A. That is right.

Q. Of course, you never suggested, either of you, at that time, that there might be strike action taken against Montgomery Ward, did you?

A. I don't recall that; we might have, however.

Q. And you didn't suggest that something had

(Testimony of J. W. Estabrook.)

to be done before a definite date or strike action would be taken? A. I think we did.

Mr. Ball: That is all.

(Witness excused)

Mr. Walker: Mrs. Fullerton.

FRANCES BERNICE FULLERTON [659]

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Bokat: Give your name and address to the reporter.

The Witness: Frances Bernice Fullerton, 7325 North Williams.

Trial Examiner Bokat: Portland?

The Witness: Yes.

Direct Examination.

Q. (Mr. Walker) You are the wife of Robert Fullerton, are you? A. Yes, sir.

Q. In the month of December, 1940, did a Mr. McGowan come to your home? A. Yes.

Q. Prior to that time, had he ever been to your home? A. No.

Trial Examiner Bokat: That is, to your knowledge?

The Witness: To my knowledge.

Trial Examiner Bokat: All right.

(Testimony of Frances Bernice Fullerton.)

Q. (Mr. Walker, continuing) Do you remember the incident of the strike taking place at Montgomery Ward here? A. Yes.

Q. About how long was it after the time when the strike started when Mr. McGowan came to your home?

A. Well, I don't remember the date; it was shortly after.

Q. About how many days? [660]

A. Oh, maybe one or two.

Q. Has Mr. McGowan been to your home at any time since that date? A. No.

Mr. Walker: That is all.

Mr. Ball: No cross examination.

Trial Examiner Bokar: The witness is excused.

(Witness excused)

(Thereupon a document was marked as Board's Exhibit 13 for identification.)

Mr. Walker: May I state that the markings appearing on Board's Exhibit 13 for identification, except those which are made in red ink, may be disregarded in consideration of the same.

Trial Examiner Bokar: Is that agreeable, Mr. Ball?

Mr. Ball: That is all right.

Trial Examiner Bokar: Now, you are offering Board's Exhibit 13 in evidence pursuant to the stipulation heretofore entered?

Mr. Walker: That is right.

Trial Examiner Bokat: It will be received and marked in evidence.

(Whereupon the document heretofore marked Board's Exhibit 13 for identification was received in evidence.)

Mr. Walker: I now move that paragraph 7 of the complaint be amended by inserting after the word "in" in the last line on [661] page 3 thereof and preceding the word "selling", the words "handling or"; and following the word "selling", again on the last line of page 3 thereof, the following: "merchandise, including display helpers, tire mounters, stockmen, order fillers, markers, messengers, outside salesmen and floor cashiers."

Trial Examiner Bokat: Off the record.

(Discussion off the record)

Trial Examiner Bokat: The motion is granted. Does the Board rest?

Mr. Walker: The Board rests, and I also move that the complaint be amended to conform to the proof.

Trial Examiner Bokat: The motion is granted.

Mr. Walker: My motion is not directed to any substantial matter in the complaint, Mr. Examiner. It is not directed, rather, to any substantive matter.

Trial Examiner Bokat: Just names, dates, and spelling, and such minor details?

Mr. Walker: That is correct.

Trial Examiner Bokat: All right, I will grant the motion.

Mr. Ball: Now, the record shows that the Board has rested?

Mr. Walker: Yes.

Mr. Ball: And that both sides have rested?

Trial Examiner Bokat: That is correct, unless the respondent has something. [662]

Mr. Ball: No, we rest.

Trial Examiner Bokat: All right. Is there anything further?

Mr. Ball: Now comes the respondent and moves the Examiner and the Board to dismiss this case case for the following reasons, to-wit:

First, that the evidence produced by the Board fails to show any failure on the part of the respondent to bargain collectively with any representative of its employees at Portland, Oregon or in the manner charged in the complaint;

Second, that the evidence produced by the Board fails to show that this strike which is now in existence in Portland, Oregon, was in any way due to any unfair labor practices on the part of the respondent;

Third, that the record as a whole fails to show the existence of any refusal to bargain collectively on the part of this respondent;

Fourth, that the record as a whole fails to show that this strike was in any way related to any unfair labor practices on the part of this respondent;

Fifth, that the record affirmatively shows that at all times the respondent has, when requested by representatives of its employees and by the charging

unions, met with and bargained with representatives selected by its employees, in good faith.

Sixth, that the record affirmatively shows that the strike here was due to other reasons than the existence of any failure [663] to bargain collectively, and, more specifically, the record affirmatively shows that the strike in this case was due to the failure of this respondent to accept the demands made by the charging unions for a closed shop, including by that term such variants as "union shop" or "union preference";

Next, that the record fails to show that the unit represented by the Retail Clerks is a proper unit for collective bargaining purposes; that the Retail Clerks' Union has at no time been selected by a majority of the employees in a proper unit of the respondent to represent them in collective bargaining; and that the record affirmatively shows a history of collective bargaining between the parties, which recognized a different unit as appropriate than that set forth in the complaint, as amended.

I think further elaboration on that motion would be unnecessary, but, if the Examiner please, there is one theory of the case, with relation to one phase of this motion, which, if I stated more fully or elaborated on our position more fully, might clarify the issue.

Trial Examiner Bokar: Suppose I first rule on the motion?

Mr. Ball: Yes.

Trial Examiner Bokat: I reserve decision on the several motions.

Mr. Ball: The theory of the case which we possess, and which I would like to explain to the Examiner, relates only to one of [664] the three or four issues which are raised by the pleadings and the evidence in this case.

The four issues, as we view them, are: (1) whether or not there was a failure to bargain collectively on the part of the respondent at any time with either of the charging unions subsequent to November 1st; (2) the second issue is whether any such failure did, in fact, cause or amount to a cause for the strike; (3) the third issue is whether the Retail Clerks, as a charging union, did have an appropriate unit so that there could have been a failure to bargain with them,—did have a majority of the appropriate unit; (4) and the fourth issue is whether or not this social conversation of Mr. McGowan's amounts to an 8-1 violation.

Of those issues, the one that perhaps deserves some explanation is the question of whether or not this strike was in any way due to unfair labor practices, namely, the failure to bargain collectively.

The respondent's theory of the cause of this strike may be pointed out by examining certain facts which are disclosed by this record.

After the certification of the Warehousemen as a bargaining agent here in Portland, which oc-

curred August 10, there was no activity on the part of the Warehousemen to solicit a contract or to negotiate a contract until sometime towards the end of September, and no pressure on the company was made, [665] or no definite or specific request was made until sometime later.

Some of the exhibits in this case indicate or suggest that the reason for that was a desire on the part of some of the other unions to organize the company.

Now, a large part of the delay between the date of certification and the date when negotiations started was thus due to causes which are not causes in any way ascribable to conduct on the part of this respondent.

Sometime in October,—October 22,—the Retail Clerks and the Office Workers, together, did meet with the company. At that time, it was clearly ascertained by both parties that a substantial item of disagreement existed upon a major issue, namely, the demand made by those two unions that a contract be signed, covering the entire store which contained a closed shop clause.

The evidence shows that these unions, especially the Retail Clerks' Union, had a number of contracts in the City of Portland, all of which included the Closed Shop Clause, and for that reason, it did not seem to the officials of that Union practicable to waive their demands for that closed shop clause.

The evidence in this record shows that in the meeting held by the Warehousemen, the closed shop clause was also the major issue, and there was

a constant source of reiteration on the part of the representatives of the Warehousemen's Union indicating [666] a complete futility of agreement, unless there was acquiescence in that demand.

Sometime in November, around November 19 or 20, a strike was called at Sears Roebuck in Seattle, at which place they have a mail order house, a unit comparable to the mail order house unit which exists here at Portland. The result of that strike was that Sears made a closed shop agreement.

An organization known as the Western Warehouse Conference has a vice-president by the name of Glazier, who is the head of a Teamsters Union at Seattle. At Seattle, resides also the vice-president of the International 'Teamsters' Union, Dave Beck. Montgomery Ward has no unit in operation at Seattle that has any employees of the kind Mr. Glazier would be interested in organizing, yet Mr. Glazier was appointed on a committee to organize Montgomery Ward in the eleven western states.

This committee was announced quite publicly, and had as its spokesman and secretary, the secretary of the Western Warehouse Council, a man by the name of White, from either Oakland or San Francisco.

At a meeting of November 25, he appeared purporting to speak for the entire A F of L on the Pacific Coast, and delivered an ultimatum to Montgomery Ward & Company that we would have to agree in Portland to a closed shop clause, with the indication that that demand would be made in other locations. [667]

Shortly after that, after the ultimatum was given, a meeting was held in Los Angeles, attended by, among others, Dave Beck, in which the committee discussed a program, and in which there was discussed the possibility of Teamsters' support to any strike action that might be taken against Montgomery Ward.

And strike action did follow at Oakland on December 4.

It is our contention that the strike action was due entirely to the organizing efforts that were directed in this fashion.

On December 5 or 6, a meeting was held in Oakland, in which Mr. White, still purporting to speak for the Portland Warehousemen and the Portland Retail Clerks, promised that if negotiations were continued, there would be no strike at Portland.

Nevertheless, the strike was called here, purportedly called on the word of Mr. White by the Retail Clerks first; and the Retail Clerks are the union, as has been already demonstrated in the record, which had a policy adopted as to contractual negotiations which made it impossible for them to back away from a closed shop clause.

I call the Examiner's attention to that fact, because I think that sets forth the facts relating to the causation of the strike here at Portland.

Mr. Walker: The Board resists the motion.

Trial Examiner Bokat: The record will so show. Is there [668] anything further? Off the record.

(Discussion off the record.)

Trial Examiner Bokat: The hearing is now closed, if there is nothing further.

(At 5:15 p. m. April 17, 1941, hearing concluded.)

[669]

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10108

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

MONTGOMERY WARD & COMPANY,
Respondent.

CERTIFICATE OF THE NATIONAL
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, “In the Matter of Montgomery Ward & Company and Warehousemen’s Union, Local No. 206,

Chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Affiliated with the American Federation of Labor," and "In the Matter of Montgomery Ward & Company and Retail Clerks' International Protective Association, Local 1257, Affiliated with the American Federation of Labor," the same being Cases Nos. C-1905 and 1906, respectively, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

R-1863

(1) Petition for investigation and certification of representatives filed by Warehousemen's Union Local #206, affiliated with I. B. of T. C. S. H. of A., sworn to April 5, 1940.

(2) Copy of order directing investigation and hearing, dated April 27, 1940.

(3) Notice of hearing issued by the National Labor Relations Board, May 6, 1940.

(4) Order postponing hearing issued by the National Labor Relations Board, May 9, 1940.

(5) Certified copy of order designating Thomas P. Graham, Jr. Trial Examiner for the National Labor Relations Board, dated May 24, 1940.

Documents listed hereinabove under items 1-5, inclusive, are contained in the exhibits and included under the following item:

(6) Stenographic transcript of testimony before Trial Examiner Graham on May 27 and 28, 1940, together with all exhibits introduced in evidence.

(7) Copy of decision and direction of election issued by the National Labor Relations Board on June 24, 1940.

(8) Copy of order correcting decision and direction of election, dated June 25, 1940.

(9) Copy of election report issued by the National Labor Relations Board, July 22, 1940.

(10) Copy of certification of representatives issued by the National Labor Relations Board on August 10, 1940.

C-1905 and 1906

(11) Charge filed by Warehousemen's Union, Local No. 206, affiliated with I. B. of T., C., W., & H. of A., Labor Temple, sworn to December 10, 1940.

(12) Charge filed by Retail Clerks International Protective Association, Local No. 1257, sworn to December 19, 1940.

(13) Copy of order consolidating cases issued by the National Labor Relations Board on March 28, 1941.

(14) Consolidated complaint issued by the National Labor Relations Board on March 31, 1941.

(15) Notice of hearing issued by the National Labor Relations Board on March 31, 1941.

(16) Respondent's answer to the consolidated complaint, sworn to April 7, 1941.

(17) Certified copy of order designating George Bokar Trial Examiner for the National Labor Relations Board in Cases Nos. XIX-C-847 and XIX-C-851, dated April 10, 1941.

Documents listed hereinabove under items 7 and 10-17, inclusive, are contained in the exhibits and included under the following item:

(18) Stenographic transcript of testimony before Trial Examiner Bokar on April 14, 15, 16, and 17, 1941, together with all exhibits introduced in evidence.

(19) Copy of intermediate report of Trial Examiner Bokar, dated June 11, 1941.

(20) Copy of order transferring cases to the Board, dated June 24, 1941, together with annexed notice.

(21) Copy of respondent's exceptions to the intermediate report.

(22) Copy of respondent's letter, dated July 14, 1941, requesting oral argument.

(23) Copy of notice of hearing for purpose of oral argument, dated July 23, 1941.

(24) Copy of list of appearances at oral argument held August 5, 1941.

(25) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board, together with affidavit of service and United States Post Office return receipts thereof.

In testimony whereof the Executive Secretary of the National Labor Relations Board, being thereun-

to duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 1st day of April, 1942.

(Seal)

BEATRICE M. STERN,

Executive Secretary

National Labor Relation Board

[Endorsed]: No. 10108. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Montgomery Ward & Company, Respondent. Montgomery Ward & Company, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of **Record**. Upon Petition for Enforcement and Upon Petition for Review of an Order of the National Labor Relations Board.

Filed: April 6, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, the petitioner herein, by its counsel, and pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the Trial of the above-entitled case to the Court:

I.

The National Labor Relations Act is applicable to respondent.

II.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

III.

The Board's order is wholly valid and proper under the Act.

ERNEST A. GROSS

Associate General Counsel

National Labor Relations Board

Dated at Washington, D. C., this 31st day of March, 1942.

[Endorsed]: Filed Apr. 6, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Montgomery Ward & Co., Incorporated (hereinafter sometimes referred to as Wards), an Illinois corporation, Respondent and cross-petitioner herein, presents this, its statement of points, and says that the Order issued on or about November 29, 1941 by the National Labor Relations Board, the review of which is sought herein is erroneous, unauthorized, and insufficient in law and should be reviewed and set aside for the following reasons:

1. The National Labor Relations Board erred in finding:

“that on September 19, 1940, and at all times thereafter, the respondent has refused to bargain with the Retail Clerks and the Warehousemen as the exclusive representative of its employees in appropriate units with respect to rates of pay, wages, hours of employment, and other conditions of employment.”

2. The National Labor Relations Board erred in deciding as a matter of law that:

“By refusing to bargain collectively with Warehousemen’s Union Local No. 206, chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and Retail Clerks’ International Protective Association, Local No. 1257, respectively, as the exclusive representatives of its employees in the respective appropriate

units, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act."

3. The National Labor Relations Board erred in finding:

"that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

4. The National Labor Relations Board erred in deciding as a matter of law that:

"By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act."

5. The National Labor Relations Board erred in finding:

"that the respondent's refusals to bargain caused and prolonged the strike at Portland, which began on December 7, 1940."

6. The National Labor Relations Board erred in deciding as a matter of law that Wards was under a duty to agree to do what the law compelled it to do in any event.

7. The National Labor Relations Board erred in deciding as a matter of law that the duty to

bargain compelled Wards to offer concessions to Union demands.

8. The National Labor Relations Board erred in deciding as a matter of law that Wards was obligated to submit written counter-proposals to the Union.

9. The National Labor Relations Board erred in deciding as a matter of law that the National Labor Relations Act deprived Wards of the right to match dilatory tactics of the Union by similar tactics of its own.

10. The National Labor Relations Board erred in deciding as a matter of law that the National Labor Relations Act prohibits an employer from telling its employees that its plant remains open despite a strike.

11. The National Labor Relations Board erred in deciding that Ward's supposed refusals to agree to do what the law compelled it to do support an inference that Wards was unwilling to contract with the Unions.

12. The National Labor Relations Board erred in deciding that refusals by Wards to offer concessions to Union demands support an inference that Wards was unwilling to contract with the Unions on acceptable terms.

13. The National Labor Relations Board erred in deciding that Ward's refusal to submit written counterproposals supports an inference that Wards was unwilling to contract with the Unions on acceptable terms.

14. The National Labor Relations Board erred in deciding that Ward's two day delay in the course of negotiations with the Union supports an inference that Wards was unwilling to contract with the Unions.

15. The National Labor Relations Board erred in deciding that Ward's action in telling its employees that its plant remained open despite a strike supports an inference that Wards was unwilling to contract with the Unions.

16. The National Labor Relations Board erred in deciding that Ward's rejection of Union demands because they were not consonant with company policy or practice supports an inference that Wards was unwilling to contract with the Unions.

17. The National Labor Relations Board erred in deciding that the Board's judgment that the terms upon which Wards insisted were unreasonable supports an inference that Wards was unwilling to contract with the Unions.

18. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon evidence that:

“The respondent, although requested to do so, did not agree to embody understandings that might be reached with the Unions in signed contracts.”

19. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon evidence that while Wards offered to assert its recog-

dition of the union in "a preliminary whereas clause" it:

"refused to agree to a clause . . . by which respondent promised to recognize it as exclusive representative . . ."

20. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon evidence that Wards:

"refused at their meetings to insert in the contract . . . a clause by which the respondent promised not to discriminate because of union membership."

21. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon declarations of Ward's representatives that:

". . . It is the Union, not the company which is seeking an agreement

and

"his conception of negotiations was that the company had no affirmative duty to do anything and that it was up to the Union to please the company"

or upon the passage from Ward's brief to the National Labor Relations Board that:

"the duty to bargain is no more than . . . the duty to meet the employee representative and do . . . or say nothing that would make a binding trade agreement impossible of attainment."

22. The National Labor Relations Board erred in basing a finding of refusal to bargain upon evidence of a refusal to submit counter-proposals or written counter-suggestions, or that Wards persisted:

“in the view that the obligation of taking further steps rested upon the Unions alone. Thus the respondent was opposed to submitting to the Unions genuine counter-proposals”

or that Wards objected to

“taking the initiative in the bargaining process.”

23. The National Labor Relations Board erred in basing a finding of refusal to bargain upon Ward's:

“repeated rejection of the Union proposals on the general ground that they were not consonant with company policy or practice.”

24. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon evidence that:

“although the respondent had decided as early as November 26 to agree to the Chicago conference, the respondent deliberately postponed conveying this information to the Unions until November 28.”

25. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon evidence of Ward's “inconsistent behavior” in sup-

posedly changing its position on three matters during the course of negotiations.

26. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon evidence that Wards:

“solicited the individual striking employees to return to work in violation of Section 8 (1) of the Act.”

27. The National Labor Relations Board erred in basing a finding of a refusal to bargain upon the total or any portion of the evidence referred to in paragraphs 18 to 26 herein.

28. The National Labor Relations Board erred in finding without substantial evidence in support thereof that Wards changed its position or acted inconsistently during the course of negotiations.

29. The National Labor Relations Board erred in finding without substantial evidence in support thereof that Wards:

“solicited the individual striking employees to return to work in violation of Section 8 (1) of the Act.”

30. The National Labor Relations Board erred in appraising the weight of the evidence upon the issue of failure to bargain in the light of its mistaken belief that Wards was under a duty to agree to do what the law compelled it to do in any event.

31. The National Labor Relations Board erred in appraising the weight of the evidence upon the issue of failure to bargain in the light of its mis-

taken belief that the duty to bargain compelled Wards to offer concessions to Union demands.

32. The National Labor Relations Board erred in appraising the weight of the evidence upon the issue of failure to bargain in the light of its mistaken belief that Wards was obligated to submit written counter-proposals to the Union.

33. The National Labor Relations Board erred in appraising the weight of the evidence upon the issue of failure to bargain in the light of its mistaken belief that the National Labor Relations Act deprived Wards of the right to match dilatory tactics of the Union by similar tactics of its own.

34. The National Labor Relations Board erred in appraising the weight of the evidence upon the issue of failure to bargain in the light of its mistaken belief that the National Labor Relations Act prohibits an employer from telling its employees that its plant remains open despite a strike.

STUART S. BALL

Attorney for Petitioner

Montgomery Ward & Co.,

Incorporated

[Endorsed]: Filed Apr. 13, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

Subject to This Court's Approval, It Is Hereby Stipulated and Agreed, by and between the attorneys for the above-named parties, that the printing of the Board's Exhibit No. 9, Constitution of Retail Clerks' International Protective Association, designated by the respondent, may be dispensed with. Provided, however, that said exhibit may be referred to in the original certified record with the same force and effect as though printed.

Dated at Washington, D. C., this 22nd day of April, 1942.

ERNEST A. GROSS

Associate General Counsel
National Labor Relations
Board

Dated at Evanston, Illinois, this 28 day of April, 1942.

STUART S. BALL

Attorney for Respondent

So Ordered:

CURTIS D. WILBUR

Circuit Judge

[Endorsed]: Filed May 4, 1942. Paul P. O'Brien,
Clerk.